

United States

Circuit Court of Appeals

For the Ninth Circuit.

ERNA KORN and MUTUAL SECURITIES
COMPANY, a Corporation,

Appellants,

vs.

SPOKANE & EASTERN TRUST COMPANY, a
Corporation, THE B. SCHADE BREWING
COMPANY, a Corporation, B. SCHADE
and L. B. STRITESKY,

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court
for the Eastern District of Washington,
Northern Division.

FILED

JUL - 2 1921

F. D. MONCKTON,
CLERK.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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CALEB JONES,

Solicitor for Complainant,

Paulsen Building, Spokane, Washington.

GRAVES, KIZER & GRAVES,

Solicitors for Defendant, S. & E. Trust Co.,
Old National Bank Bldg., Spokane,
Washington.

POST, RUSSELL & HIGGINS,

Solicitors for Intervenor Mutual Securities
Company,

Exchange National Bank Bldg., Spokane, Wash.

MERRITT, LANTRY & MERRITT,

Solicitors for Intervenor M. H. Eggleston,
Old National Bank Bldg., Spokane,
Washington.

A. G. AVERY,

Solicitor for A. G. Avery, as Executor of
the Last Will and Testament of Robert
Morrill, Deceased,

Peyton Building, Spokane, Washington. [1*]

*Page-number appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States, Eastern
District of Washington, Northern Division.

ERNA KORN,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST COMPANY,
THE B. SCHADE BREWING COMPANY,
B. SCHADE and L. R. STRITESKY,
Defendants.

Bill of Complaint.

To the Judge of the District Court of the United
States, *the* Eastern District of Washington,
Northern Division:

That Erna Korn, a citizen of the State of New York, residing at 752 Prospect Avenue, New York City, New York, humbly complains of the Spokane & Eastern Trust Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, and having its principal place of business at Spokane, in said State and a citizen and inhabitant of the said Eastern District of the State of Washington, and of the B. Schade Brewing Co., a corporation organized and existing under and by virtue of the laws of the State of Washington, and having its principal place of business at Spokane, in said state, and a citizen and inhabitant of the said Eastern District of the State of Washington, and B. Schade and L. R. Stritesky, citizens and residents of the State of Washington and the

Eastern District thereof, residing at Spokane, Washington.

Plaintiff complaining on the behalf of herself and all other stockholders in said The B. Schade Brewing Company, who shall come in due time and seek relief by contributing to the expenses of this action, shows to this Court:

I.

This is a suit of civil nature and the matters in dispute between the plaintiff and the defendants exceed the sum or value of Three Thousand Dollars, exclusive of interest and costs, [2] and as the plaintiffs have been informed and believe, and therefore aver, of the value of more than Two *Thousand* Fifty Thousand Dollars (\$250,000.00).

II.

That the plaintiff Erna Korn is now and has been for more than ten years last past, a citizen and resident of the State of New York.

III.

That the defendant, Spokane & Eastern Trust Company, is a corporation organized and existing under and by virtue of the laws of the State of Washington, having its principal place of business at Spokane in said state, and is a citizen and inhabitant of the said Northern Division of the Eastern District of the said State of Washington.

IV.

That the defendant The B. Schade Brewing Company is a corporation organized and existing under and by virtue of the laws of the state of Washington, with its principal place of business at Spo-

kane, in said state, and is a citizen and inhabitant of the said Northern Division of the said Eastern District of the State of Washington; that said corporation was organized in March, 1903, with a capital stock of One Hundred Fifty Thousand Dollars (\$150,000), and again in April, 1907, to Seven Hundred Fifty Thousand Dollars (\$750,000); that the present capital stock of said company is divided into seventy-five hundred (7500) shares of the par value of One Hundred Dollars (\$100.00) each; that there is now outstanding five thousand (5000) shares of said capital stock; that said corporation has a Board of three trustees and since April, 1907, Sophia Schade, the defendant B. Schade and L. R. Stritesky, have constituted the Board of Trustees of the said The B. Schade Brewing Company; that the objects of said company as stated in its Articles of Incorporation are as follows, to wit: [3]

“To brew, manufacture and sell beer and to carry on and conduct a general brewing and malting business and to purchase all materials that may be necessary for the purpose of carrying on and conducting a general brewing and malting business, also to acquire purchase and sell real estate as well as personal property of every nature and kind for the purpose of carrying on and conducting a general brewing and malting and bottling business, also to build and erect breweries, malt houses and bottling works in any part of the States of Washington, Idaho, Oregon, California and Montana and to purchase all things necessary and proper for

the purpose of carrying out of the objects of this corporation or any of them''; that said corporation was to continue its existence for a period of fifty (50) years.

V.

That the defendant B. Schade is now and has been the president of the said The B. Schade Brewing Company from the date of its organization and the said L. R. Stritesky its secretary during the same period of time.

VI.

That ever since the 23d day of August, 1907, plaintiff has been a stockholder of the said The B. Schade Brewing Company, to the extent of fifty (50) shares of its capital stock of the par value of One Hundred Dollars (\$100.00) per share and holds certificate No. 34 of said shares of stock, dated August 23, 1907, and is the owner thereof; that in pursuance of the objects of its organization, the said The B. Schade Brewing Company, purchased the real property hereinafter described for a consideration of [4] approximately One Hundred Thousand Dollars (\$100,000) and that the said The B. Schade Brewing Company thereafter expended in building on said property, approximately the sum of Two Hundred Fifty Thousand Dollars (\$250,000) and for the installation of machinery and equipment therein an additional sum of approximately One Hundred Thousand Dollars (\$100,000); and during all the time herein mentioned used the same in the active prosecution of the objects of its organization; all of which prop-

erty is mentioned and more particularly described hereinafter, in that certain alleged conveyance to the said defendant the Spokane & Eastern Trust Company; that said property is at the present time reasonably worth the sum of Three Hundred Fifty Thousand Dollars (\$350,000); that said property constitutes practically all of the property holdings of the said The B. Schade Brewing Company, and was all essential and necessary for carrying into effect and execution the objects of its said corporate organization and without it the active life of said corporation is suspended.

VII.

That on or about the 24th day of January, 1918, the defendant B. Schade was the president and the defendant L. R. Stritesky was the secretary, and they together with Sophia Schade, wife of the said B. Schade, constituted the board of trustees of the said The B. Schade Brewing Company, and the said Schades owned and had control of a majority of the shares of its capital stock, and exercised arbitrary control over the affairs and management of said company, and still are such officers, and still continue to exercise such ownership and control, with absolute disregard of the rights of the minority stockholders thereof. That while acting as such officers, said defendants B. Schade and L. R. Stritesky purporting to act in behalf of the said corporation and in violation of the rights of the plaintiff and all other minority stockholders and without previous authorization of either the board of trustees or the stockholders of said company and

in transgression [5] of its charter provisions, and with the intent and for the purpose of making and securing certain personal advantages over the other stockholders, conveyed all the said property of the said The B. Schade Brewing Company to the said Spokane & Eastern Trust Company by that certain Warranty Deed, which has been duly recorded in Book 355 of Deeds, at page 599 of the Records of Spokane County, State of Washington; that said property was therein described as follows, to wit:

“Block Sixteen (16) and Seventeen (17) of Resurvey of the Second Addition to Third Addition to Railroad Addition to Spokane in Spokane County, Washington, as per plat thereof recorded in Book ‘C’ of Plats, on page 79, in the office of the Auditor of said County, also that part of Ferry Street, vacated, more particularly described as follows, to wit: Beginning on the Northwest corner of Lot Twelve (12) in Block Seventeen (17) of Resurvey of Second Addition to Third Addition to Railroad Addition; thence running Easterly and along the Southerly side of Ferry Street to the Northeast Corner of Lot One (1) in Block Seventeen (17) of said Addition; running thence Northerly to a point eighty (80) feet; thence running Westerly and along the North side of Ferry Street to the Southwest corner of Lot Four (4) in Block Sixteen (16) of said Addition; thence in a Southwesterly direction and along Sheridan Street to the Northwestern corner of said

Lot Twelve (12) in said Block Sixteen (16), being the place of beginning.”

“Also that part of the vacated alley in said Block Seventeen (17), more particularly described as follows, to wit; Beginning on the Northwest corner of Lot Thirteen (13) in Block Seventeen (17) of Second Addition to Railroad Addition to Spokane, running thence East and along the Southerly side of said alley to the Northeast corner of Lot Thirty (30) of said Block Seventeen (17) and to the Westside of Hatch Street; running thence North along the Westside of Hatch Street Fifteen (15) feet to a point, thence running West along the Northerly side of said alley to the Southwest corner of Lot Twelve (12) in said Block Seventeen (17) of said Addition; running thence South and along the East side of Sheridan Street, Fifteen (15) feet to the place of beginning”; [6]

“Excepting from the above described premises the property appropriated by the Spokane Terminal Company, a corporation, by decree dated September 7, 1905, entered in Journal 93 on page 81, and recorded in the Auditor’s office in Book 166 of Deeds on page 156, and excepting from the above described premises the property appropriated by the Northern Pacific Railway Company, by decree, dated November 7, 1905, recorded in Journal 93, Page 202, and recorded in the office of the Auditor of Spokane County, in Book 165 of Deeds on page 421.”

“And including as far as they now are or may hereafter belong to or be used with the building on the said premises, all elevators, heating and ventilating apparatus, all gas, electric light and other fixtures, and all machinery and mechanical appliances of every kind and character, now or hereafter placed in the brewing and bottling plants of said grantor, with all other fixtures and appliances therein used as a part of said brewing and bottling plants, together with all privileges, hereditaments and appurtenances, thereunto now or hereafter belonging or otherwise appertaining, and the rents, issues and profits arising therefrom; it being the intention of the grantor to convey hereby the lands above described, with the brewing and bottling plants thereon, with the trade fixtures and appliances therein contained, as an entirety.”

VIII.

That contemporaneous with the execution and delivery of said Warranty Deed aforementioned, the defendant Spokane & Eastern Trust Company, a corporation, as party of the first part entered into that certain agreement with the defendant The B. Schade Brewing Company, as party of the second part, a copy of which is hereto attached, marked Plaintiff's Exhibit “A” and made a part hereof which was calculated to and did secure to the defendant B. Schade and to Sophia Schade, his wife, the right to the individual use of said property for a year and 6 months, without rental, and they were

released from all personal liability by reason of their having signed certain notes sued upon by the State Finance Company; that said concessions were made to the said B. Schade and wife as an inducement or consideration for his execution of that certain deed of conveyance mentioned in the preceding paragraph. [7]

IX.

That during all the time herein mentioned, the plaintiff has resided at New York City, New York, and had no notice or intimation of whatsoever kind, of the execution of the foregoing mentioned conveyance or agreement and never consented or assented to any such acts, or became cognizant of their performance until on or about the first day of June, 1919, when the plaintiff was informed of the same by the said B. Schade; that thereafter plaintiff employed counsel, and as she is informed and believes, and therefore avers, that on or about July 15, 1919, said counsel on her behalf, made demand upon said The B. Schade Brewing Company, and its said managing officers and trustees, to bring or cause to be brought an action against the defendant Spokane & Eastern Trust Company, to set aside as illegal and void said warranty deed and agreement; and the said The B. Schade Brewing Company and its officers refused to bring any such action, or take any steps for an avoidance of disaffirmance of said deed and agreement. That the said B. Schade and Sophia Schade, his wife, are still in possession and charge of said property. That the plaintiff was a shareholder, as aforesaid, at the time of the trans-

actions complained of, and this suit is not a collusive one to confer on this court jurisdiction of which it would not otherwise have cognizance. That the acts complained of are fully executed and completed, and as plaintiff is informed and believes and therefore avers, beyond the power of the said The B. Schade Brewing Company, or its managing officers, to have said deed and agreement set aside without a resort to a court of equity.

X.

That the plaintiff is remediless at law and the exercise of the equitable powers of this Court are necessary to redress plaintiff's wrongs and injuries aforesaid in the conveying of all of the property of the said The B. Schade Brewing Company and the suspension of its corporate life, contrary to the statutes in [8] such cases made and provided, and in violation of the rights and privileges of the plaintiff.

And to the end that the said Spokane & Eastern Trust Company, The B. Schade Brewing Company, B. Schade and L. R. Stritesky, defendants, by full, true, direct and certain answers made according to their knowledge, information and belief, to all and singular the matters and charges aforesaid, but not under oath, their answers on oath being expressly waived, plaintiff prays as follows:

1. That the said conveyance or deed by the said The B. Schade Brewing Company to the said Spokane & Eastern Trust Co. and the said agreement between the same parties be set aside as illegal and inequitable and the same be declared null and void,

and the said property therein mentioned be returned to said repossession by the said The B. Schade Brewing Company, subject to the rights of its creditors and stockholders.

2. That the plaintiff have such other and further relief that to this Court may seem meet and proper, together with a reasonable attorney's fee for plaintiff's attorney and all other costs in this action.

3. May it please your Honor to grant the plaintiff the right to subpoena issuing out of and under the seal of this Honorable Court, directed to the said Spokane & Eastern Trust Co., a corporation, and to the said The B. Schade Brewing Company, a corporation, and to the said B. Schade and R. L. Stritesky, commanding each of them by a certain day and under certain penalty to be therein inserted, to be and appear before this Honorable Court, and then and there to answer the premises and to further stand and abide by such order and decree therein as shall be agreeable to equity and good conscience; and plaintiff will ever pray.

CALEB JONES,

Solicitor for Plaintiff.

Postoffice Address: 620 Paulsen Bldg., Spokane,
Washington. [9]

State of New York,
County of Bronx,—ss.

Personally appeared before me, the undersigned authority, Erna Korn, the plaintiff in the above cause, who being duly sworn as to the truth of the allegations made in the above bill, says that she has read the foregoing bill and knows the contents

thereof and the same is true of her own knowledge except as to matters therein stated on information and belief, and as to those matters she believes them to be true.

ERNA KORN.

Subscribed and sworn to before me this 11th day of August, 1919.

EDWARD A. ACKER,

Notary Public in and for the State of New York,
Residing at Bronx County, 77 Forest Ave.,
New York City. [10]

Exhibit "A."

L. R. S.

AGREEMENT.

THIS AGREEMENT made and entered into this 24th day of January, 1918, by and between the Spokane & Eastern Trust Company, a corporation, party of the first part, and the B. Schade Brewing Company, a corporation, party of the second part:

WHEREAS, said first party has been heretofore the owner of a mortgage of date October 5, 1914, upon the following described real estate and personal property, to wit:

Blocks Sixteen (16) and Seventeen (17) of Resurvey of the Second Addition to Third Addition to Railroad Addition to Spokane, in Spokane County, Washington, as per plat thereof recorded in Book 'C' of Plats on page 79, in the office of the Auditor of said County, also that part of Ferry Street, vacated, more particularly described as follows, to wit: Beginning on

the Northwest Corner of Lot Twelve (12) in Block Seventeen (17) of Resurvey of Second Addition to Third Addition to Railroad Addition; thence running Easterly and along the Southerly side of Ferry Street to the Northeast Corner of Lot One (1), in Block Seventeen (17) of said Addition; running thence Northerly to a point eighty (80) feet; thence running Westerly and along the North Side of Ferry Street to the Southwest Corner of Lot Four (4) in Block Sixteen (16) of said Addition; thence in a Southwesterly direction and along Sheridan Street to the Northwestern Corner of said Lot Twelve (12) in said Block Sixteen (16), being the place of beginning.

Also that part of the vacated alley in said block Seventeen (17), more particularly described as follows, to wit: Beginning on the Northwest Corner of Lot Thirteen (13) in Block Seventeen (17) of Second Addition to Third Addition to Railroad Addition to Spokane, running thence East and along the Southerly side of said alley to the Northeast corner of Lot Thirty (30) of said Block Seventeen (17) and to the West side of Hatch Street running thence North along the West side of Hatch Street; Fifteen feet to a point, thence running West along the Northerly Side of said alley to the Southwest Corner of Lot Twelve (12) in said Block Seventeen (17) of said addition; running thence South and along the East side of Sheridan Street, Fifteen (15) feet to the place of beginning.

Excepting from the above-described premises the property appropriated by the Spokane Terminal Company, a corporation, by decree dated September 7, 1905, entered in Journal 93 on page 81 and recorded in the Auditor's office in
L. R. S.

Book 166 of [11] of Deeds on page 156; and excepting from the above-described premises the property appropriated by the Northern Pacific Railway Company, by decree, dated November 7, 1905, recorded in Journal 93, Page 202, and recorded in the office of the Auditor of Spokane County, in Book 165 of Deeds on page 421.

And including as far as they now are or may hereafter belong to or be used with the building on the said premises, all elevators, heating and ventilating apparatus, all gas, electric lights and other fixtures, and all machinery and mechanical appliances of every kind and character, now or hereafter placed in the brewing and bottling plants of said grantor with all other fixtures and appliances therein used as a part of said brewing and bottling plants, together with all privileges, hereditaments and appurtenances thereunto now or hereafter belonging or otherwise appertaining, and the rents, issues and profits arising therefrom; it being the intention of the grantor to convey hereby the lands above described, with the brewing and bottling plants thereon, with the trade fixture and appliances therein contained, as an entirety.

which said mortgage is recorded in the office of the Auditor of Spokane County, in Book 281 of Mortgages, at page 379; and,

WHEREAS, the amount due said first party from said second party on account of said mortgage, taxes, insurance premiums, attorneys' fees and interest to January 1, 1918, is as follows, to wit:

Principal notes.....\$50,000.00

With interest at 8% from July 3, 1916, to

January 1, 1918..... 5,997.78

Delinquent tax certificate..... 5,485.45

Interest thereon at 8% from Nov. 9, 1917,

to January 1, 1918..... 62.17

Insurance..... 486.05

Interest thereon at 8% from Nov. 16,

1917, to January 1, 1918..... 4.75

January 1, 1918, insurance..... 237.50

Personal property taxes paid on account

of certificate of delinquency..... 126.31

Attorneys' fees..... 1,250.00

Total.....\$63,650.01

AND WHEREAS, said second party has heretofore caused to be conveyed to said first party, by conveyances which are agreed to be absolute and indefeasible, all of the real estate, personal property, rights and privileges described in said mortgage, in full settlement of its indebtedness to said first party, which said indebtedness it is agreed on

L. R. S.

January 1, 1918, [12] amounts to the sum of \$63,650.01; and,

WHEREAS, said second party desires an option to purchase from said party the property hereinbefore conveyed;

NOW, THEREFORE, this agreement WITNESSETH:

1. In consideration of the conveyance to it of the property above described and of the covenants and agreements hereinafter contained, said first party hereby grants to said second party an option to purchase said above-described real estate and personal property until July 1, 1919. The purchase price of said property under said option to be the sum of \$63,650.01, together with interest thereon from January 1, 1918, until said option is exercised and said purchase price is paid, at the rate of 7% per annum, together with such sums as said first party shall pay during the life of this option on account of insurance premiums, taxes, assessments, revenue stamp expenses, abstracting expense necessary to show clear title in said first party, and any other expenses necessary or proper in the maintenance or preservation of the property herein described, with interest on each of said sums from the date of payment until the date said purchase price is paid, at the rate of 7% per annum. Receipts from the payment of such additional amounts to be conclusive between the parties to this agreement of the amount, validity and fact of the payment thereof.

2. Second party shall have the right to enter into and upon said premises during the life of this option for the purpose of inspection or showing the same to prospective purchasers, and shall have and

retain a key to the buildings for this purpose, and the parties hereto shall co-operate together in good faith for the purpose of securing a satisfactory purchaser for said premises.

3. IT IS UNDERSTOOD AND AGREED that all income derived from said premises during the life of this option shall be paid to and received by first party, who shall credit the same on account of this option and shall charge against this option all

L. R. S.

[13] moneys paid on account of taxes, insurance, revenue stamp expenses, abstracting expenses, and all other expenses necessary and proper therein, and in the event said option is exercised an accounting shall be had between said parties and said first party shall be paid whatever balance shall be due on account of the purchase price of said premises.

4. IT IS UNDERSTOOD AND AGREED that the fixtures and personal property described herein may be sold in whole or in part for such price and on such terms as shall be agreeable to both parties hereto. First party shall have the right to lease said premises, but no lease so given shall interfere with the rights of said second party and shall terminate on the exercise of this option. No alterations shall be made in the buildings and no fixtures, appliances or machinery shall be removed therefrom without the consent of both parties, during the period of this option.

5. IT IS FURTHER UNDERSTOOD AND AGREED that if during the lifetime of this option said second party desires to conduct in the bottling

works on said premises a business of its own, or if B. Schade or Sophia Schade, his wife shall personally operate a business in said bottling works, that no rental shall be charged therefor as long as said business is conducted by the said Schades personally or by said second party on its own account, but that the same shall not be leased or sublet by the Schade Company or the Schades to any other party or parties whatsoever.

6. IT IS UNDERSTOOD AND AGREED that upon the execution and recording of the deeds and bills of sale of the premises above described, vesting in said first party good title to the same, free from encumbrances excepting the mortgage hereinbefore referred to, and tax liens, and upon execution of this option and agreement, that the action pending in the Superior Court of Spokane County, entitled State Finance Company vs. B. Schade Brewing Company et al., will be dismissed, with prejudice, and without costs, and that all notes and said mortgage shall be [14] canceled and surrendered to said second party, and that no recourse shall be had as against said B. Schade or said Sophia Schade, personally, on account of signing said notes.

7. IT IS FURTHER UNDERSTOOD AND AGREED that said first party shall not cause said premises to be insured in a sum greater than that provided for in the mortgage described herein.

IN WITNESS WHEREOF, the parties to this agreement have caused the same to be executed in

duplicate the day and year first above written.

SPOKANE & EASTERN TRUST COM-
PANY.

By (Sgd.) CONNOR MALOTT,
Its Vice-president.

By (Sgd.) W. T. TRIPLETT,
Its Secretary.

B. SCHADE BREWING COMPANY.

By (Sgd.) B. SCHADE,
Its President.

[Seal] By (Sgd.) L. R. STRITESKEY.

[Endorsements]: Filed in the United States Dis-
trict Court, Eastern District of Washington. Au-
gust 16, 1919. W. H. Hare, Clerk. By H. J. Dun-
ham, Deputy. [15]

UNITED STATES OF AMERICA.

District Court of the United States, Eastern Dis-
trict of Washington, Northern Division.

IN EQUITY.

Subpoena ad Respondendum.

The President of the United States of America,
GREETING: To Spokane & Eastern Trust
Co., The B. Schade Brewing Co., B. Schade, L.
R. Stritesky.

YOU ARE HEREBY COMMANDED, that you
be and appear in said District Court of the United
States aforesaid, at the courtroom, of said court, in
the city of Spokane, twenty days from the issuing
thereof, to answer a bill of complaint filed against

you in said court by Erna Korn, citizen of the State of New York, and to do and receive what the Court shall have considered in that behalf. And this you are not to omit, under the penalty of Five Thousand Dollars.

WITNESS, the Honorable FRANK H. RUDKIN, Judge of the United States District Court for the Eastern District of Washington, and the seal of said District Court this 16th day of August, 1919.

W. H. HARE,
Clerk.

By _____,
Deputy Clerk.

MEMORANDUM PURSUANT TO RULE 13,
SUPREME COURT U. S.

YOU ARE HEREBY REQUIRED to file your answer or other defense in the above mentioned suit on or before the 20th day after service, excluding the day thereof, at the clerk's office of said court, pursuant to said bill; otherwise the said bill will be taken *pro confesso*.

W. H. HARE,
Clerk.

By _____,
Deputy Clerk. [16]

United States of America,
Eastern District of Washington,—ss.

I hereby certify, that I served the within writ by delivering to and leaving a true copy thereof with Schade Brewing Company by serving B. Schade, as president, and served B. Schade, personally, and served a copy on Spokane & Eastern Trust Co., by

serving R. Lewis Rutter, as president, and served a copy on L. R. Stritsky, at Spokane, Wash.

Fees, 8.18.

August, 16th, 1919.

J. E. McGOVERN,
United States Marshal.
By J. W. Dennison,
Deputy.

[Endorsed]: No. 3281. United States District Court, Eastern District of Washington. In Equity. Erna Korn vs. Spokane & Eastern Trust Co. et al. Subpoena. Filed in the U. S. District Court, Eastern Dist. of Wash. Aug. 18, 1919. W. H. Hare, Clerk. By H. J. Dunham, Deputy.

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

ERNA KORN,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST COMPANY,
THE B. SCHADE BREWING COMPANY,
B. SCHADE and L. R. STRITESKY,
Defendants.

Demurrer.

Comes now the defendant Spokane & Eastern Trust Company and demurs to the complaint of the plaintiff for the reason that such complaint does not

state facts sufficient to constitute a cause of action against this defendant.

GRAVES, KIZER & GRAVES,
Attorneys for Defendant Spokane & Eastern Trust
Company. [17]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

ERNA KORN,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST COMPANY,
THE B. SCHADE BREWING COMPANY,
B. SCHADE and L. R. STRITESKY,
Defendants.

Stipulation Fixing Time to Serve Answer.

IT IS HEREBY STIPULATED that defendant
Spokane & Eastern Trust Company have until April
4th, 1920, within which to serve its answer in the
above-entitled cause.

Dated this 24th day of March, 1920.

CALEB JONES,

Attorney for Plaintiff.

GRAVES, KIZER & GRAVES,
Attorneys for Defendant Spokane & Eastern Trust
Company.

[Endorsements]: [18]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

ERNA KORN,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST COMPANY,
B. SCHADE BREWING COMPANY,
B. SCHADE and L. R. STRITESKY,
Defendants.

Answer of Spokane & Eastern Trust Company.

For answer to the bill of complaint herein defendant Spokane & Eastern Trust Company:

I.

Admits that this bill is a suit of civil nature and that the property which is affected by the suit is of greater value than Three Thousand Dollars, exclusive of interest and costs, denies the remaining allegations of paragraph I of said bill.

II.

Avers that defendant is without knowledge concerning the allegations of paragraph II of said bill.

III.

Admits the allegations of paragraph III of said bill.

IV.

Admits the allegations of paragraph IV of said bill.

V.

Admits the allegations of paragraph V of said bill.

VI.

Admits that plaintiff is a stockholder in the B. Schade Brewing Company, as alleged in paragraph VI of the bill; admits that the B. Schade Brewing Company acquired the property affected by this suit for its corporate purposes and that such property was used for its corporate purposes during the time that such corporation was engaged in business; admits that it constituted practically all the property holdings of the B. Schade Brewing Company. [19] Admits that the property is described in the conveyance to this defendant, which is referred to in the bill; denies the remaining allegations of the said paragraph VI.

VII.

Admits that the defendants Schade and Stritesky were president and secretary of the B. Schade Brewing Company, and that they, with Sophia Schade, wife of B. Schade, constituted the board of trustees of the Brewing Company; admits that the B. Schade Brewing Company conveyed the property described in the seventh paragraph of the bill by warranty deed as alleged in said seventh paragraph; denies the remaining allegations of the seventh paragraph of said bill.

VIII.

Admits that this defendant entered into an agreement with the B. Schade Brewing Company as alleged in paragraph VIII of the bill; admits that the indebtedness described in the agreement referred to in paragraph VIII was fully satisfied and discharged by the transaction set forth therein;

denies the remaining allegations of said paragraph VIII.

IX.

Avers that this defendant is without knowledge concerning plaintiff's residence or respecting any demand she may have made upon the B. Schade Brewing Company's officers and their reply thereto; admits that plaintiff was a stockholder in the B. Schade Brewing Company at the time of the transaction and that this suit is not collusive; denies the remaining allegations contained in paragraph IX of the bill.

X.

Denies the allegations contained in paragraph X of the bill. [20]

FURTHER ANSWERING and for a FIRST AFFIRMATIVE DEFENSE to the allegations contained in the bill of complaint, defendant Spokane & Eastern Trust Company alleges:

I.

The property described in plaintiff's bill of complaint and a reconveyance of which is thereby sought was conveyed to this defendant in payment and satisfaction of an indebtedness owing to this defendant by the B. Schade Brewing Company. Such indebtedness arose from money loaned to the B. Schade Brewing Company by this defendant and its assignors, which money was used by the B. Schade Brewing Company in the conduct of its corporate business and for the benefit of the Brewing Company and of its shareholders. No part of said money has ever been repaid, nor the indebtedness in any way discharged or reduced, save by the con-

veyance of the property referred to in the bill of complaint, which conveyance was accepted in payment of such indebtedness as aforesaid. This defendant avers that it would be unjust and inequitable to decree a reconveyance of the property save upon condition that the indebtedness owing by the B. Schade Brewing Company be paid by that Company or its shareholders, and that no suit by or on behalf of the B. Schade Brewing Company or its shareholders should be entertained without an offer on its or their part to do equity by payment of such debt. Inasmuch as plaintiff has not offered to do equity herein her bill of complaint should be dismissed.

FURTHER ANSWERING and for a SECOND AFFIRMATIVE DEFENSE to the allegations of the bill of complaint, defendant Spokane & Eastern Trust Company alleges:

I.

That the plaintiff was informed of the proposed transfer of the property of the B. Schade Brewing Company to this defendant in satisfaction of indebtedness owing by the Brewing Company to this defendant, and its assignors, and made no objection thereto prior to the making of such conveyance. She stood by until the conveyance [21] was made and this defendant had satisfied and discharged the indebtedness of the B. Schade Brewing Company to it and its assignors and dismissed the suit brought to foreclose the mortgage upon the property affected hereby, which had been given to secure the payment of the indebtedness aforesaid. She stood by also

while this defendant entered into possession of such property and expended money on account thereof and in reliance upon the conveyance of the property to it, and made no objection whatsoever thereto.

WHEREFORE, this defendant says that plaintiff has been guilty of laches which debars her from relief in a court of equity.

FURTHER ANSWERING and for a THIRD AFFIRMATIVE DEFENSE to the allegations contained in the bill of complaint, the defendant Spokane & Eastern Trust Company alleges:

I.

Prior to the adoption of the act forbidding traffic in intoxicating liquors within the State of Washington the B. Schade Brewing Company was engaged in the business of manufacturing and selling beer in the city of Spokane, and in the conduct of such business acquired the property referred to in the bill of complaint and a reconveyance of which is thereby sought. In the conduct of its business it was obliged from time to time to borrow money, and prior to October 1, 1914, it had borrowed from this answering defendant and its assignors \$50,000, which money was used by the B. Schade Brewing Company in the conduct of its business and for the benefit of itself and its shareholders. On or about October 5, 1914, it executed a mortgage upon all its property to secure such indebtedness, the mortgage and indebtedness which it was given to secure being the same which is referred to in the agreement which is attached as Exhibit "A" to plaintiff's bill of complaint.

II.

Prohibition of the manufacture and sale of intoxicating liquors within the State of Washington destroyed the business of the B. Schade Brewing Company, and rendered it incapable of paying [22] its debts or of paying the taxes on its property. After some ineffectual efforts to conduct the business of manufacturing and selling soft drinks it suspended business and was without funds to pay any indebtedness or to discharge the taxes on its property. The mortgage and indebtedness it was given to secure had been assigned to the State Finance Company, a subsidiary corporation of this defendant and which thereafter acted on behalf of this defendant. The State Finance Company was required to and did make sundry disbursements on account of delinquent taxes, for insurance on the property, etc., and thereafter brought suit to foreclose such mortgage. Pending the foreclosure suit and at the solicitation and earnest request of the B. Schade Brewing Company this defendant and the B. Schade Brewing Company entered into an agreement, which is set forth as Exhibit "A" to plaintiff's bill of complaint. A conveyance of the property covered by such mortgage was made to this defendant in pursuance of the agreement aforesaid and likewise in pursuance of such agreement the mortgage of the B. Schade Brewing Company and the indebtedness it was given to secure was satisfied, canceled and discharged and the notes evidencing the indebtedness were surrendered and the pending foreclosure suit was dismissed with prejudice and

without costs. At the time of the making of such agreement and of the satisfaction of the debt and dismissal of the foreclosure suit as aforesaid, the indebtedness of the B. Schade Brewing Company was in the amount stated in Exhibit "A" aforesaid and such debt was never paid nor reduced in any other wise than by such conveyance.

III.

The B. Schade Brewing Company was without defense to the foreclosure suit aforesaid and the sole purpose of entering into the said Exhibit "A" and in doing the things which were done thereunder was to relieve the Brewing Company of the costs of the foreclosure suit and sale and from a probable deficiency judgment therein. By virtue of the option to repurchase contained in [23] said Exhibit "A," the B. Schade Brewing Company and its shareholders obtained in effect a redemption period of eighteen months instead of the one year allowed by statute had there been a sale under foreclosure. Neither the B. Schade Brewing Company nor any shareholder exercised or sought to exercise the option to repurchase contained in Exhibit "A," and after the expiration of such period, to wit, in the latter part of the year 1919, this defendant offered all the shareholders of the B. Schade Brewing Company the right to repurchase by repayment of the indebtedness of the B. Schade Brewing Company to this defendant, and offered to each shareholder the right to become a proportional owner with this defendant in the property described in Exhibit "A" by the payment by such shareholder of a part of the

indebtedness of the B. Schade Brewing Company proportioned to the number of shares in the B. Schade Brewing Company owned by each shareholder. Several of the shareholders of the B. Schade Brewing Company have accepted such offer and have paid to this defendant a portion of the indebtedness of the B. Schade Brewing Company and have thereby become proportional owners with it in the property. This offer was made to plaintiff herein but was declined by her.

WHEREFORE, having fully answered, the defendant Spokane & Eastern Trust Company prays that plaintiff's bill of complaint be dismissed and that it recover its costs from her.

SPOKANE & EASTERN TRUST COMPANY,

By GRAVES, KIZER & GRAVES,

Its Attorneys.

F. H. GRAVES,

W. G. GRAVES,

B. H. KIZER,

Solicitors for Spokane & Eastern Trust Company.

[Endorsements]: Filed in the U. S. District Court, Eastern District of Washington. March 30, 1920. Wm. H. Hare, Clerk. H. J. Dunham, Deputy. [24]

In the District Court of the United States for the
Eastern District of Washington, Northern Di-
vision.

No.—.

ERNA KORN,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST COMPANY,
THE B. SCHADE BREWING COMPANY,
B. SCHADE and L. R. STRITESKY,
Defendants,

Order to Take Bill as Confessed.

The subpoena in the above-entitled cause having been returned, which return has been filed, and it appearing therefrom that the said subpoena was duly served on The B. Schade Brewing Company, B. Schade and L. R. Stritesky, three of the defendants above named, and no answer having been filed by either of them, when answers should have been filed by each of them, on or before the 5th day of September, A. D. 1919, the same being the twentieth day after the service of the subpoena including the day of service, therefore, on motion of Caleb Jones, solicitor for the plaintiff, it is ORDERED AND DECREED that plaintiff's bill of complaint be taken as confessed as to the said The B. Schade Brewing Company, B. Schade and L. R. Stritesky, said defendants.

Dated this 5th day of April, A. D. 1920.

W. H. HARE,
Clerk.

[Endorsements]: Filed in the U. S. District Court, Eastern District of Washington. April 5, 1920. Wm. H. Hare, Clerk. H. J. Dunham, Deputy. [25]

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

ERNA KORN,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST COMPANY,
THE B. SCHADE BREWING COMPANY,
B. SCHADE and L. R. STRITESKY,
Defendants.

Notice of Presentation of Petition to Intervene.

To Spokane & Eastern Trust Company and to Graves, Kizer & Graves, Your Attorneys; and to Erna Korn and Caleb Jones, Your Attorney:

You, and each of you, are hereby notified that the undersigned will present the attached petition to intervene to the above-entitled court at 10:00 o'clock A. M., on the 28th day of September, 1920, or as soon thereafter as counsel can be heard.

Dated at Spokane, Washington, this 17th day of September, 1920.

POST, RUSSELL & HIGGINS,
Attorneys for Mutual Securities Company.

MERRITT, LANTRY & MERRITT,
Attorneys for M. H. Eggleston.

A. G. AVERY,
Attorney for A. G. Avery as Executor of the Last
Will and Testament of Robert Morrill, Deceased.
[26]

In the District Court of the United States, for the
Eastern District of Washington, Northern Di-
vision.

ERNA KORN,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST COMPANY,
THE B. SCHADE BREWING COMPANY,
B. SCHADE and L. R. STRITESKY,
Defendants.

Petition to Intervene.

Come now Mutual Securities Company, a corpora-
tion, M. H. Eggleston and A. G. Avery, as executor
of the last will and testament of Robert Morrill, de-
ceased, and petition the Honorable Court above
named, and allege as follows:

I.

That the Mutual Securities Company is a corpora-
tion organized under the laws of Minnesota and is
the owner of 155 shares of the common stock and

45 shares of preferred stock of the B. Schade Brewing Company, and has been the owner of said stock since 1913, having acquired the same from the estate of John B. De Laittre, deceased; that the said John De Laittre purchased the said stock in the year 1907, and was the owner thereof at the time of his death.

II.

That M. H. Eggleston is a resident of the City of Spokane, Washington, and is the owner of 50½ shares of the capital stock of The B. Schade Brewing Company, having acquired the same by purchase as follows: 25 shares on June 1st, 1907; 5½ shares on July 15th, 1907; and 20 shares on October 11th, 1907.

III.

That A. G. Avery, as executor of the last will and testament of Robert Morrill, deceased, is a resident of the city of Spokane, Washington, and was appointed as executor of the last [27] will and testament of Robert Morrill, deceased, in said will, and qualified as executor on June 7th, 1917, the said Robert Morrill having died on April 21st, 1917, testate, leaving a nonintervention will; that at the time of the death of the said Robert Morrill, he was the owner of 50 shares of the preferred stock and 100 shares of the common stock of The B. Schade Brewing Company, having acquired the same by purchase in 1907, and as such executor of the last will and testament of Robert Morrill, deceased, the said A. G. Avery is the owner of all of said stock.

IV.

That heretofore and on or about the 1st day of

September, 1919, the above-named plaintiff brought an action against the defendants named in the title of this cause in the above-entitled court in behalf of himself and all other stockholders of The B. Schade Brewing Company who are similarly situated and desire to contribute to the expense of this action; that the issues in said cause are made up at this time, and the case is set for trial September 17th, 1920. Reference is made to the bill of complaint of the said Erna Korn on file in the above-entitled court and cause, and also to the answer of the defendants in the above-entitled court and cause for the substance of the said bill and said answer and the nature of this proceeding, and, in addition thereto, these petitioners state that they are owners and holders of capital stock of The B. Schade Brewing Company, as set forth hereinabove, and, in order to have their claims adjudicated without a multiplicity of suits, do hereby petition this Court that they be made parties plaintiff or defendant, as may seem best to the Court in said above cause, so that their claims may be adjudicated; that they seek the same relief against the defendants named in the title of the above-entitled cause as set forth more particularly in the bill of complaint of the said plaintiff on file in this cause; that the interest of these [28] petitioners in the above litigation is identical with that of the plaintiff in the above-entitled cause, excepting as to amounts.

WHEREFORE, these petitioners pray the Court for permission to file their bill of intervention if the Court should require the same, or for permission to

join with the plaintiff Erna Korn in the above-entitled cause, as parties plaintiff or parties defendant, as the Court may direct, and that the relief sought in the original bill of complaint of the said Erna Korn be granted to these petitioners as well as to the said Erna Korn.

MUTUAL SECURITIES COMPANY,

M. H. EGGLESTON,

A. G. AVERY,

As Executor of the Last Will and Testament of Robert Morrill, Deceased.

POST, RUSSELL & HIGGINS,

Attorney for Mutual Securities Company.

MERRITT, LANTRY & MERRITT,

Attorneys for M. H. Eggleston.

A. G. AVERY,

Attorney for A. G. Avery as Executor of
the Last Will and Testament of Robert
Morrill, Deceased. [29]

State of Washington,
County of Spokane,—ss.

A. E. Russell, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the petitioners named in the foregoing petition, and makes this verification in behalf of all of said petitioners, and is authorized by them so to do; that he has read the foregoing petition, knows the contents thereof, and the same are true, as he verily believes.

A. E. RUSSELL.

Subscribed and sworn to before me this 17th day
of September, 1920.

[Seal] H. V. DAVIS,
Notary Public in and for the State of Washington,
Residing at Spokane, Wash. [30]

In the District Court of the United States for the
Eastern District of Washington, Northern Di-
vision.

No. 3281.

ERNA KORN,

Plaintiff,

VS.

SPOKANE & EASTERN TRUST COMPANY,
THE B. SCHADE BREWING COMPANY,
B. SCHADE and L. R. STRITESKY,
Defendants,

and

MUTUAL SECURITIES COMPANY, M. H.
EGGLESTON and A. G. AVERY, as Ex-
ecutors,

Intervenors.

Opinion.

CALEB JONES, for Plaintiff.

GRAVES, KIZER & GRAVES, for Spokane &
Eastern Trust Company.

POST, RUSSELL and HIGGINS, MERRITT,
LANTRY & MERRITT, and A. G. AVERY,
for Intervenor.

RUDKIN, District Judge.

It appears from the complaint and answer in this case that on the 5th day of October, 1914, the Brewing Company mortgaged substantially all of its property to the Trust Company to secure an indebtedness of \$50,000.00. On the 1st day of January, 1918, this indebtedness, together with interest and certain disbursements made by the mortgagee for the protection of the mortgage lien, amounted to the sum of \$63,650.01. On the 24th day of January, 1918, the Brewing Company conveyed the mortgaged property to the Trust Company in payment and satisfaction of the mortgage debt, and the Trust Company, in turn, executed an agreement whereby it agreed to reconvey the property to the Brewing Company on or before July 1, 1919, upon the payment of this indebtedness, together with interest at the rate of seven per cent per annum from January 1, 1918.

The present suit was instituted by a stockholder of the Brewing Company, in her own behalf, and on behalf of other stockholders [31] who might join and contribute to the expense, to cancel and set aside the conveyance from the Brewing Company to the Trust Company, and the agreement to reconvey from the Trust Company to the Brewing Company.

The plaintiff is a citizen of the State of New York, and the defendants citizens of this State. Three other stockholders have asked leave to intervene and to be made parties plaintiff or defendant as may to the Court seem best and pray for the same relief as does the original plaintiff. One of the intervenors

is a citizen of the State of Minnesota, and no objection to the intervention of this party is urged by either plaintiff or defendants. The other two intervenors are citizens of this state, however, and the Trust Company objects to their intervention upon the sole ground that their presence as parties will oust the court of jurisdiction. The question thus presented is by no means free from difficulty, and no case directly in point has been cited by either side. The rule is well settled that where a Federal Court acquires jurisdiction by reason of the citizenship of the parties the Court will allow third persons to intervene if necessary for the protection of their rights, without regard to their citizenship or the amount of their claims. This rule has usually been applied in creditors' suits and in suits to foreclose mortgages or other liens, where property or funds are brought within the custody of the Court. Under any other rule it would be impossible in many cases to administer trust funds or foreclose liens in a Federal Court. But there must be some limitation on this rule, and the Trust Company contends that it has no application except to the cases to which I have referred, or to cases of like character. There is much force in this contention.

It was held by Judge Pardee, in *United Electric Securities Co. vs. Louisiana Electric L. Co.*, 68 Federal, 673;

“Where jurisdiction rests upon the diverse citizenship of complainant and defendant, and, during the proceeding, a third party, who is a citizen of the same state with defendant, inter-

venes, the court will have no jurisdiction of his controversy [32] with defendant, unless the controversy between complainant and defendant is one which brings to the Court the possession and control of the defendant's property, in which the intervenor claims some interest."

In this case the only relief sought, and the only relief which the Court can grant, is a cancellation of the deed and contract. No property is brought within the custody of the Court; the Court has no property or fund to administer, and the intervenors assert no interest in or to any such property or fund. It is not at all necessary that they should be permitted to intervene for the protection of their rights. They will not be affected or bound by the decree, unless they become parties or take part in the trial. Certainly they will not be bound if the Court refused to allow them to become parties and they do not participate. On the other hand, all parties concerned express an entire willingness that these intervenors may participate as fully in the trial as though they were in fact parties, and if they do so openly they, and all other parties, to the suit will be bound by the final decree. Of course, their connection with the case will rest in parol; but even this difficulty might be removed by a stipulation providing for their taking part in the trial and that they will be bound by the result.

Inasmuch as I am of the opinion that the presence of the intervenors who are citizens of this State would render the jurisdiction of the Court doubtful, to say the least, I do not think they should be per-

mitted to intervene, where intervention is not necessary for the protection of their rights.

The petition will therefore be allowed as to the citizen of Minnesota; but disallowed as to the citizens of this State.

[Endorsements]: Filed in the U. S. District Court, Eastern District of Washington. Oct. 7, 1920. W. H. Hare, Clerk. [33]

In the District Court of the United States, for the
Eastern District of Washington, Northern
Division.

No. 3281.

ERNA KORN,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST COMPANY;
THE B. SCHADE BREWING COMPANY;
B. SCHADE and L. R. STRITESKY,

Defendants,

and

MUTUAL SECURITIES COMPANY, M. H. EG-
GLESTON and A. G. AVERY, as Executors,
Intervenors.

Memorandum.

CALEB JONES, Attorney for Plaintiff.

GRAVES, KIZER & GRAVES, for Spokane & Eastern Trust Company.

POST, RUSSELL & HIGGINS, MERRITT, LANTRY & MERRITT, and A. G. AVERY, for Intervenors.

RUDKIN, District Judge.

The issues here involved were thus stated in a former opinion.

“It appears from the complaint and answer in this case that on the 5th day of October, 1914, the Brewing Company mortgaged substantially all of its property to the Trust Company to secure an indebtedness of \$50,000.00. On the 1st day of January, 1918, this indebtedness, together with interest and certain disbursements made by the mortgagee for the protection of the mortgage lien, amounted to the sum of \$63,650.01. On the 24th day of January, 1918, the Brewing Company conveyed the mortgaged property to the Trust Company in payment and satisfaction of the mortgage debt, and the Trust Company, in turn, executed an agreement whereby it agreed to reconvey the property to the Brewing Company on or before July 1, 1919, upon the payment of this indebtedness, together with interest at the rate of seven per cent per annum from January 1, 1918.

“The present suit was instituted by a stock-

holder of the Brewing Company, in her own behalf, and on behalf of other stockholders who might join and contribute to the expense, to cancel and set aside the conveyance from the Brewing Company to the Trust Company, and the agreement to reconvey from the Trust Company to the Brewing Company."

There is little or no controversy over the facts. The execution of the mortgage, the amount of the mortgage debt, its nonpayment, the conveyance of the mortgaged property, the agreement to reconvey, the dismissal, with prejudice, of a suit pending in the state court to foreclose the mortgage, the satisfaction of the mortgage of record, and the surrender of the notes secured by the mortgage are all conceded or proved beyond controversy. In [34] the face of these facts what, if any, remedy has either the corporation or the plaintiff and interveners as stockholders. Counsel contend that the deed and agreement to reconvey are void for two reasons. First, because *ultra vires*, and second, because of the provision in the agreement that during the life of the option the Brewing Company or the Schades might conduct a business in the bottling works free of rent, with a provision against subletting.

It may be that a solvent private corporation conducting a successful business in this state may not sell out or abandon the corporate enterprise over the protest of minority stockholders. The rule is thus stated in *Lange v. Reservation Mining & Smelting Co.*, 48 Wash. 167:

“It is the contention of the appellant that neither the trustees, nor a majority of the stockholders of a corporation, have power, against the objection of minority stockholders, to sell or otherwise dispose of the entire property of the corporation, where no necessity exists for such action, such as the payment of legitimate debts, the prevention of further losses from a losing business, or such like causes. Unquestionably this was the rule of the common law as applied to a corporation organized to carry on a particular business, when such sale would have the effect of thwarting the purposes for which it was organized, and destroying the corporation itself; and especially was it true where the purposes of the sale was to ‘freeze out,’ or otherwise deprive the minority stockholders from further participation in the profits of the business conducted by the corporation.”

But no such case is presented here. The business which the Brewing Company was organized to promote and in which it was chiefly engaged had become unlawful by reason of the amendment to the State Constitution prohibiting the manufacture and sale of intoxicating liquors. After the adoption of this amendment the corporation was no longer a going concern, and if not insolvent in the sense that its debts exceeded its assets, it was at least insolvent in the sense that it could not pay its debts as they became due in the ordinary course of business. Finding itself in this plight, only one course was open to it. That was to dispose of its property, pay its debts, and

distribute the surplus, if any, among its stockholders. No other course has been suggested by counsel, and no other course suggests itself to the Court. The [35] power of the trustees to do this without the consent of all stockholders, so long as they acted in good faith, does not, in my opinion, admit of question. They might have made a general assignment for the benefit of creditors; they might have filed a voluntary petition in bankruptcy; or they might, as trustees for creditors and stockholders pursue the course followed in this case.

The claim that the agreement is void on the second ground calls for little comment in the light of facts. It was manifestly in the interest of all concerned that the property should be occupied in some way by some person. The right of occupancy for a given purpose was first granted to the corporation, and if the corporation did not elect to exercise the right then the like right was granted to the Schades, who in the past had the management and control of the corporate business. The Schades only obtained such rights as the corporation might accord them, and a fraud was neither committed nor contemplated by the parties. But if I am in error in this conclusion it can avail the plaintiff and interveners but little. The mortgage has been satisfied of record; the mortgagee has been placed in possession by the mortgagor, and the mortgage debt has not been paid. Under such circumstances the utmost relief that could properly be granted to either the corporation or the stockholders would be a right of redemption. If under any circumstances this suit could be treated as a suit of that

character or for that purpose, it should at least appear that either the corporation or the stockholders are ready and willing to pay the amount due on redemption. No such readiness or willingness is averred in the pleadings, and no such readiness or willingness was disclosed at the trial. Counsel frankly conceded that the stockholders did not have the means to effect a redemption, and further conceded that if they had the means it would not be deemed advisable to employ them in that way.

Under such circumstances, in any view of the case, the complaint is entirely devoid of equity and must be dismissed.

Let a decree be entered accordingly. [36]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

No. 3281.

ERNA KORN,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST CO., THE B.
SCHADE BREWING CO., B. SCHADE,
and L. R. STRITESKY,

Defendants,

and

MUTUAL SECURITIES COMPANY, M. H.
EGGLESTON, and A. G. AVERY, as Exec-
utors,

Intervenors.

Decree of Dismissal.

This cause came on to be heard at this time and was argued by counsel. Thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz: That the bill of plaintiff herein be dismissed out of this court and that the bill of intervention of the Mutual Securities Company be dismissed out of this court, and that the defendant Spokane & Eastern Trust Co. recover its costs against plaintiff and against said intervenor to be taxed.

FRANK H. RUDKIN,
Judge.

O. K. as to form.

CALEB JONES,
Solicitor for Plaintiff,

O. K. as to form.

POST, RUSSELL & HIGGINS,
Attorneys for Mutual Securities Co.

[Indorsements]: Filed in the U. S. District Court, Eastern District of Washington. November 3, 1920. Wm. H. Hare, Clerk. H. J. Dunham, Deputy.

United States of America,
Eastern District of Washington,—ss.

I, W. H. Hare, Clerk of the District Court of the United States for the Eastern District of Washington, do hereby certify that I have compared the foregoing copy with the original Decree in cause No. 3281, Erna Korn, Plaintiff, vs. Spokane & Eastern Trust Co. et al., Defendants and Mutual Securities Co., et al., Intervenors in the foregoing entitled cause,

now on file and of record in my office at Spokane, and that the same is a true and perfect transcript of said original and of the whole thereof.

Witness my hand and the seal of said court this 28th day of June, 1921.

[Seal]

W. H. HARE,
Clerk.

By _____,
Clerk.

[Endorsed]: No. 3693. United States Circuit Court of Appeals for the Ninth Circuit. Certified Copy of Decree of Dismissal. Filed Jul. 1, 1921. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

In the District Court of the United States, for the Eastern District of Washington, Northern Division.

No. 3281.

ERNA KORN,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST CO., THE B. SCHADE BREWING CO., B. SCHADE and L. R. STRITESKY,

Defendants.

MUTUAL SECURITIES COMPANY,

Intervenor.

**Notice of Lodgment of Statement of Facts and Time
and Place of Motion for Approval.**

To the Spokane & Eastern Trust Company and to
Messrs. Graves, Kizer & Graves, Your Attorneys
The B. Schade Brewing Company, B. Schade,
and L. R. Stritesky, Defendants:

YOU AND EACH OF YOU will please take notice
that the plaintiff and appellant in the above-entitled
cause has prepared and lodged with the clerk of the
above-entitled court a statement of the testimony of
the witnesses introduced at the trial of said cause,
entitled a statement of facts, a copy of which is here-
with served upon you.

AND YOU ARE FURTHER NOTIFIED that
the plaintiff and appellant will move the Court to
approve and direct filing of the same at 10 o'clock
A. M. on the 30th day of April, 1921, or as soon there-
after as counsel can be heard, at the United States
Courtroom at Spokane, Washington; and to further
order that the original exhibits referred to therein
shall be attached to said statement as a part thereof
to be considered as a part of the record on appeal in
said cause.

Dated this 20th day of April, 1921.

CALEB JONES,

Attorney for Plaintiff.

POST, RUSSELL & HIGGINS,

Attorneys for Intervenor,

Appellants. [37]

Service of the above notice by copy thereof, to-
gether with a copy of statement of the testimony of

witnesses, is hereby admitted this 20th day of April, 1921.

GRAVES, KIZER & GRAVES,
Attorneys for Defendant, Spokane & Eastern Trust
Company.

MRS. B. SCHADE,
Vice-President B. Schade Brewing Company.

MRS. B. SCHADE,
Executor of the Estate of B. Schade, Deceased.

L. R. STRITESKY.

[Endorsements]: Filed in the U. S. District Court,
Eastern District of Washington. April 20, 1921.
Wm. H. Hare, Clerk. By H. J. Dunham, Deputy.
[38]

In the District Court of the United States, for the
Eastern District of Washington, Northern
Division.

No. 3281.

ERNA KORN,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST CO., THE B.
SCHADE BREWING COMPANY, B.
SCHADE and L. R. STRITESKY,

Defendants;

MUTUAL SECURITIES COMPANY,

Intervenor.

Order Approving Statement of Facts.

The above-entitled matter coming on to be heard

on the 30th day of April, 1921, upon the presentation of a statement of the testimony of witnesses in this cause having been prepared by plaintiff and intervenor, appellants, and lodged with the clerk of this court upon the 20th day of April, 1921, and due notice of said lodgment and the time and place of asking the Court's approval thereof having been given and served on the defendants or appellees at least ten days prior to said 30th day of April, 1921, and the said statement having been corrected and agreed upon by the parties hereto and conforming to the facts;

Therefore, said statement, entitled "Statement of Facts," is found to be true and complete and properly prepared and is hereby approved. The inclusion of that portion of the foregoing statement of facts reproduced in the exact words of the witnesses by question and answer is in accordance with the desire of appellants in this cause.

Done in open court at Spokane, Washington, this 30th day of April, 1921.

FRANK H. RUDKIN,
District Judge.

[Endorsements]: Filed in the U. S. District Court, Eastern District of Washington. April 30, 1921. Wm. H. Hare, Clerk. H. J. Dunham, Deputy. [39]

In the District Court of the United States for the
Eastern District of Washington, Northern
Division.

No. 3281.

ERNA KORN,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST CO., THE B.
SCHADE BREWING CO., B. SCHADE and
L. R. STRITESKY,

Defendants;

MUTUAL SECURITIES COMPANY,

Intervenor.

Statement of Facts.

Lodged this 20th day of April, 1921,

W. H. HARE. [40]

BE IT REMEMBERED that on the 18th day of
October, 1920, at a term of the District Court of the
United States, for the Eastern District of Washing-
ton, Northern Division, held at Spokane, Washing-
ton, the above-entitled cause came regularly on for
trial before the Hon. Frank H. Rudkin, Judge of said
Court, the plaintiff being represented by her counsel,
Messrs. A. G. Avery, John Merritt and Caleb Jones,
and the defendant, Spokane & Eastern Trust Com-
pany by Messrs. Graves, Kizer & Graves, and the in-
tervenor, Mutual Securities Company by Messrs.
Post, Russell & Higgins, whereupon the following
proceedings were had, to wit:

Mr. GRAVES.—I move at this time to dismiss the bill with prejudice and for final judgment upon the following grounds; the bill itself on its face shows that the corporation cannot maintain this action and the stockholders assuming the rights of a corporation cannot maintain it. Moreover, a stockholder who undertakes to sue in right of corporation must go further than to show a simple demand upon the corporation but must show that his rights as a stockholder are directly affected and that the corporation could maintain the same action and therefore the stockholder can maintain it on the refusal of the corporation; failing that, the bill will not lie. On the further ground that the bill contains no offer to do equity.

The COURT.—I think we will proceed with the testimony.

Whereupon Mr. Jones made an opening statement in behalf of plaintiff.

Mr. JONES.—At this time we should like to offer plaintiff's exhibit marked No. 1, which was read and admitted in evidence.

Exhibit No. 2, being notice of Lis Pendens, then read and admitted in evidence.

Plaintiff's Exhibit No. 3 was then offered and admitted in evidence. [41]

Testimony of L. R. Stritesky, for Plaintiff.

L. R. STRITESKY, one of the defendants, was sworn on behalf of the plaintiff and testified as follows:

Direct Examination.

By Mr. JONES.—I am the secretary of the B.

(Testimony of L. R. Stritesky.)

Schade Brewing Company and have been in that position since its organization in 1903 up to the present time. I know that the B. Schade Brewing Company acquired the land mentioned in plaintiff's complaint, Exhibit "A," from Mr. B. Schade in September, 1903.

Q. Do you recall the value of that property at the time of its acquisition?

Mr. GRAVES.—To that I object as immaterial and as too remote.

The COURT.—That is too remote to establish its bearing at the present time or have any bearing on it. I will sustain the objection.

Mr. JONES.—Q. Do you know, Mr. Stritesky, what amount was expended in the buildings on this property?

Mr. GRAVES.—To that I think I shall object.

The COURT.—At what time?

Mr. JONES.—At the time they were constructed.

The COURT.—When were the buildings constructed? A. From 1902 to 1908.

The COURT.—It seems to me so self-evident that money expended in the construction of the building 10 or 15 years ago has not the slightest relation to its value today. I will sustain the objection.

Mr. JONES.—I assume that an exception goes to all adverse rulings.

The COURT.—Yes.

Q. Do the books of the company show what amount has been expended in the construction of these buildings? I am asking this for the record.

(Testimony of L. R. Stritesky.)

The COURT.—Oh, for the purpose of making the record I will allow the answer to go in but I do not think it will influence any court in the world in reaching a conclusion. He may answer the [42] question if you desire. A. They do.

Q. What amount was it?

Mr. GRAVES.—To that I make the same objection.

The COURT.—I will allow it to go in for the purpose of making up the record in an equity case.

A. \$130,000.

The COURT.—He may answer the other question to which I sustained an objection, if you desire.

Mr. JONES.—Q. As secretary of that company do you know what was spent? The books of the company show what was spent for the equipment, the brewery equipment and machinery in that building? A. Yes, sir.

Mr. GRAVES.—We make the same objection.

The COURT.—Same ruling.

A. I do. It was \$152,000 approximately, in round figures. I am one of the defendants in this case. I do not know approximately the price paid for the land. I am familiar with the machinery that was in the Schade Brewing Company buildings. It is the machinery that was conveyed in this agreement that I signed as secretary of the company and the deed that I signed conveying the property to the Spokane & Eastern Trust Company. Mr. B. Schade owned 2606 shares of a total of 5000 issued in the B. Schade Brewing Company. There have been 5000

(Testimony of L. R. Stritesky.)

shares issued. Mr. B. Schade was the active manager and had control of the company at the time of the execution of Plaintiff's Exhibit "A," the agreement and deed.

Q. At the time that this agreement and deed mentioned in the complaint was executed by you, do the minutes of the B. Schade Brewing Company show any authorization to you to execute the instrument?
[43]

Mr. GRAVES.—To that I object. The minutes are the best evidence.

The COURT.—He cannot testify as to what the minutes contain. He can testify as to what they do not contain. If there is any minute on it, the minutes are the best evidence.

Mr. GRAVES.—The minutes fail to show any preauthority but they do show under the doctrine of the court a ratification, which is the same thing. I think the minute ought to be produced.

The COURT.—Are the minutes here?

A. They are.

The COURT.—You may introduce whatever record there is on that.

Mr. JONES.—I am placed in the position where if the minutes do not show it I would have to offer the whole volume of minutes to show that there was no minute.

The COURT.—Of course it will come out sometime. Counsel on the other side has stated that there was no preauthority but there is a ratification. You

(Testimony of L. R. Stritesky.)

can offer them in evidence. Is that satisfactory to you, Mr. Graves?

Mr. GRAVES.—Yes, put in whatever minute there in on this.

Q. Are there any minutes pertaining to this transaction? A. There are.

Q. Have you the minute-book?

A. The minute-book is on the table there.

Q. You may give the time of the minutes pertaining to this transaction.

Q. "Spokane, Washington, February 4, 1918. The regular monthly meeting of the trustees of the B. Schade Brewing Company was held at Mr. Schade's residence at 2:30 P. M. Officers present: B. Schade, President and Treasurer, S. Schade, Vice-President, L. R. Stritesky, Secretary. Minutes of previous meeting read and approved. The president drew to the attention of the directors that the Spokane & Eastern Trust Company holding the mortgage of \$50,000 against the corporation, had begun foreclosure proceedings some time ago, which proceedings if carried through the courts [44] would have caused unnecessary expense and no benefits realized. Therefore on the 24th day of January, an agreement entered into with the Spokane & Eastern Trust Company whereby the real estate of the company was conveyed to the Spokane & Eastern Trust Company with an option of repurchase until July 1, 1919, the purchase price of said option to be \$63,650.01 plus accrued interest and other expenses as fully set forth in agreement, a copy of which is

(Testimony of L. R. Stritesky.)

filed for record in Vol. "Q," Records of Contracts of the County on page 51, signed L. R. Stritesky (Seal)." I am reading from book of the minutes of the company, of the B. Schade Brewing Company. That is all of the minutes pertaining to this transaction in the book of minutes,—minutes of the directors or trustees. I remember the time of service of copy of the complaint in this action on me. Previous to that time counsel for the plaintiff had called on me in relation to this cause. They made a request or demand of me at that time. The request or demand was that the officers of the B. Schade Brewing Company start suit against the Spokane & Eastern Trust Company. Previous to that time I had not heard any conversation with other officers of the company in relation to this matter. My reply to the request or demand was that I couldn't do anything in the matter. I took no action. It was a verbal demand. After the demand was refused a copy of the complaint was served on me. The demand was made before the complaint was filed. Previous to that demand I did not know that a demand was made on Schade.

Cross-examination.

By Mr. GRAVES.—I own 91 shares of stock in the company. I owned two or three shares in the beginning and later on bought more. At the time of this transaction that was my holding. Mrs. Schade owned 50 shares. There is a reference to the foreclosure of this mortgage in the minutes of November 5, 1917. At that time the advisability of contesting

(Testimony of L. R. Stritesky.)

the proceeding was discussed and it was decided to get legal advice on the subject. At the regular [45] monthly meeting of December 3, 1917, it was reported at the meeting that counsel had been secured to represent the company at the coming foreclosure proceeding and that every effort would be made to secure justice to the company.

Mr. JONES.—I move to strike out the question and answer on the ground that it is immaterial and irrelevant in relation to the mortgage.

The COURT.—I will allow it to go in on the same theory that I allowed your testimony to go in, for the purpose of making up the record.

It is correct that at a meeting of October 1, 1917, Mr. Schade brought to the attention of the officers that on the 19th of September, and preceeding, the Spokane & Eastern Trust Company, the holder of the \$50,000 mortgage against the property of the company, had served notice of foreclosure proceedings upon the company's property. Ways and means were discussed of meeting this new turn of the company's affairs. Mr. Schade called attention to a letter which he had addressed to the stockholders asking for an expression of opinion from them in this crisis and means of meeting it.

Mr. JONES.—We make the same objection, if the Court pleases. My idea in making a general objection at this time is that I want to object to all testimony offered under cross-examination of counsel for defendants excepting that pertaining to the question of laches. All the balance I regard as immaterial

(Testimony of L. R. Stritesky.)

and I should like to have my position made clear.

The COURT.—I will allow it to go in, as I say, subject to the objection.

The WITNESS.—What occurred at the meeting of February 4, 1918, has already been read in evidence. Meetings were held monthly thereafter. At the meeting of May 6, 1918, announcement was made that operation in the bottling works, consisting of the manufacture of soft drinks, had been discontinued on the 10th of [46] and it is a fact that they had been discontinued and they were not resumed after that. At a meeting of June 3, 1918, various plans were discussed and considered for the sale of the machinery and equipment of the brewing plant as well as the real estate, several offers for the same having been made in the meantime. Hopes were expressed that some arrangement could be made to dispose of either a portion or the entire equipment and real estate. That matter was fully discussed. At the meeting of July 1, 1918, I find it stated, "There being no business activity at the company's plant there is very little of interest to bring before the company and the meeting adjourned very quickly." At the meeting of August 5, 1918, it is stated, "Mr. Schade stated that negotiations for the sale of the machinery were still in progress with several parties but that no definite results had been obtained." At a meeting of October 7, 1918, the record shows the following: "The only incident of note occurring was the statement of Mr. Schade that the negotiations for the sale of the brewing machinery

(Testimony of L. R. Stritesky.)

indicated good chances for the early sale of the same." At the meeting of November 4, 1918, it is reported: "Mr. Schade stated that the deal for the sale of the brewing machinery that had been pending for some time was still in the balance with good prospects of its going through. If successful this sale would enable the company to take care of the mortgage and thus release the property." These minutes record briefly and accurately what took place. At the meeting of December 2, 1918, Mr. Schade stated: "That owing to the embargo on shipping on the Pacific it was difficult to obtain results in making business transactions involving the sale of machinery in foreign ports." At the meeting of January 6, 1919, he reported that there was no change in the status of the sale of machinery but that the prospects were improving with the termination of the war. At a meeting of February 3, 1919, the negotiations for the sale of the brewing machinery were reported as proceeding slowly with various pending purchasers corresponding [47] regarding it. At the meeting of March 3d he reported that there was no change in the general situation but various negotiations were being carried on looking to the disposal of the plant. On April 7, 1919, he reported that negotiations for the sale of the plant were still pending with varying hopes of success. Nothing occurred except the election of officers on April 7th and at our meeting of May 5th our minutes say there was no developments in the disposal of the property. At the meeting of June 2d, 1919, the following oc-

(Testimony of L. R. Stritesky.)

curring: "Various properties of the company in outlying towns consisting of vacant lots of doubtful value were deeded to friends who had rendered the company valuable and friendly assistance in the past, as the company was unable to pay the taxes and other expenses that was due at that time." I signed the deeds for the reason stated in the minutes. At the monthly meeting of July 7, 1919, it was stated: "During a discussion of the business affairs of the company it was brought to notice that according to some alleged agreement entered into some years ago the property of the company was to pass into the possession of the Spokane & Eastern Trust Company on the first of July—," that would be at the end of the eighteen months period— "however, this agreement was made while Mr. Schade was seriously ill and since then several proceedings in court have occurred tending to further complicate the matter. The while affair is in an uncertain stage and the Spokane & Eastern Trust Company has made no move to take possession. The whole matter is being carefully watched and the interests of the corporation safeguarded, as Mr. Schade, the president of the company, while still not in possession of his full powers is commencing to feel like himself again." Subsequently the Spokane & Eastern Trust Company did take possession. I cannot give the date. I believe it was shortly after that and they have remained in possession ever since. Beginning with the incorporation of the company in 1903 up to the present time there have been stockholders meetings, ann-

(Testimony of L. R. Stritesky.)

ual meetings of stockholders. No notice was ever sent out. Others attending the meetings besides the [48] Schades and myself in the beginning. When the Spokane & Eastern Trust Company had acquired an interest or had sold some of the stock to some of their financial acquaintances, some of the officials of the Spokane & Eastern Trust Company and also some of the stockholders attended the meetings for several years. The officers of the Spokane & Eastern Trust Company owned a few shares of stock. The stockholders, I think. About 200 or 300 shares. And they sold to various of their connections some stock. I think they attended the stockholders' meeting in 1919. I would have to refresh my memory as to the last reorganization. Approximately it was 1907 and 1908, I think it was. For about four or five years thereafter there was an attendance at the stockholders meeting, four or five years after 1903, during 1907 and 1908. A while after 1903 Mr. Hess was a stockholder. John B. Hess, the attorney. Up to the time the Spokane & Eastern Trust Company acquired interest it was practically a closed corporation, that is Mr. Schade, Mr. Hess, Dr. Ritcher and a few others formed the corporation and they used to attend. When the Spokane & Eastern Trust Company came in they used to attend. They attended for several years and some of the people that they interested in it. Afterwards when business commenced to get to the point where it was not paying the interest seemed to fall off and they did not attend. Nobody attended, so that for a num-

(Testimony of L. R. Stritesky.)

ber of years before the transaction ended the stockholders' meeting consisted of the Schades and myself, and the Schades and myself were at all times the board of directors, and the stockholders' meeting and board of trustees' meeting have all been held at the same time and place.

Q. And you three people ran it?

A. We have—some of us run it in a way.

Q. As a matter of fact, Schade ran it?

A. Yes, sir.

Q. Just as he pleased? A. Pretty much so.

[49]

Q. From the date of the organization down to the time the thing went up in smoke?

A. I think that is very nearly correct.

Q. Well, it is practically absolutely correct, isn't it? A. I think you are right there.

There were a large number of local stockholders in the city. None of them attended except as stated. I understand at times they would come down and inquire about the business of the company and see Mr. Schade. The minutes of the company as they have been recorded were kept continually by me, not only at the times and places referred to but dates previous to that and the book of minutes was in the office of the corporation and I believe has always been open to inspection by any stockholder. The Schade Brewing Company quit business after prohibition went into effect in this state and they never did any more business except to run a soft drink establishment for some time afterwards. Not a great length of time

(Testimony of L. R. Stritesky.)

and on a very small scale. I don't think it was a paying proposition. If it had paid I suppose they would have kept on. I do not believe that from the time of prohibition up to the present date the Schade Brewing Company had a dollar's worth of money and cannot pay their taxes. Somebody besides the Schade Brewing Company paid the taxes. When the deed and agreement was signed foreclosure proceedings were pending on this mortgage. The company was represented by Mr. O. C. Moore. I do not remember that the question of deeding was discussed with me.

Q. Well, did you just sign the deed because Mr. Schade requested it?

A. Well, I suppose—it wasn't discussed. It was merely stated, as Mr. Schade usually did, that he would have to sign the property over. Couldn't pay the mortgage and there wasn't anything else to do. The question of having 18 months [50] additional time for redemption was discussed. It was hoped that in 18 months we might sell the machinery and possibly enough of the real estate to redeem. The only business that the company undertook to do in the 18 months was to try and do this and they failed utterly in it. They neither sold the machinery nor the real estate. They finally gave away what little outlying real estate they had because they didn't have any money to pay taxes on it.

Redirect Examination.

(By Mr. JONES.)

Q. At the time of signing this agreement you

(Testimony of L. R. Stritesky.)

stated that there had been no previous discussion with you as to the advisability of signing it, Mr. Stritesky?

A. I don't exactly recall. Of course I knew in a general way that the mortgage foreclosure proceedings were going on and we were threatened with a suit, and I suppose it was talked over that I knew something about. I wasn't concerned in the matter. I was just requested to sign the deed and agreement when it was presented. I do not recall who presented it to me. I do not recall the occasion now.

Testimony of Frederick Elmendorf, for Plaintiff.

FREDERICK ELMENDORF, a witness called on behalf of plaintiff, after being first duly sworn, testified as follows:

Direct Examination.

My name is Frederick E. Elmendorf. I live in Spokane. I am in the real estate and investment. I have been in that business since 1892.

Mr. GRAVES.—His qualification to express an opinion will not be disputed.

Q. I will ask you if you are acquainted with the following described—

Mr. GRAVES.—Why don't you ask him about the Schade Brewing Company property?

Q. Are you acquainted with the Schade Brewing Company, the real property in Spokane? [51]

A. I am.

Q. You may state what in your opinion the value of the property was on January 24, 1918?

(Testimony of Frederick Elmendorf.)

Mr. GRAVES.—To that I object as immaterial.

Mr. JONES.—Just the real estate exclusive of building ? A. In the neighborhood of \$100,000.

Cross-examination.

By Mr. GRAVES.—I fixed the date at January, 1918. That wouldn't mean a forced sale subject to redemption. What it would have sold for at forced sale subject to redemption would be very difficult to say. There might have been some concerns that would have considered it but it would have been very difficult to have found them. I mean any kind of a forced sale would have been very difficult to get through.

Q. If a man had owned that property and had been up against it so he had to realize money, how long would it have taken him to have raised \$100,000 on it? That is the practical question here, not what it was abstractly worth.

A. I do not know. At that time Mr. Schade approached us frequently to see if we could sell the property. No we could not sell it. At that time Mr. Schade said he would not sell the property short of \$150,000 and we never were instructed or authorized—We have some people interested. I mean that there are people whom I think would have considered the purchase of the property if it could have been bought at what they considered would be reasonable. I think that they might have bought the whole property, that is the building and all for \$150,000. I have no reason to say that they would not.

Q. Suppose I had owned that property and come

(Testimony of Frederick Elmendorf.)

to you and said, "Elmendorf, I am broke, I have got to make a trade of this property quick, now what can you get out of it for me in cash so that I can pay off a mortgage or something," what would you have told me? [52] A. You mean right away?

Q. Oh, yes, that is in a period of three, or four or five months we will say.

A. Well, I would have said that it ought to have been sold for something between \$75,000 and \$100,000. I had nobody that offered me the money and I never found anyone that offered the money. There were some people at that time who were figuring on increasing their plant and business, I think might have considered it at some such money as that.

Testimony of S. E. Hege, for Plaintiff.

S. E. HEGE, a witness called on behalf of plaintiff, after being first duly sworn, testified as follows:

Direct Examination.

By Mr. JONES.—My name is S. E. Hege. I live at Spokane. I have resided there nearly 15 years. I am in the real estate business.

Mr. JONES.—You also admit his qualifications, Mr. Graves?

Mr. GRAVES.—Yes.

WITNESS.—I am acquainted with the Schade Brewing Company property. In my judgment the value of the property on January 24, 1918, exclusive of buildings thereon was about \$100,000.

Cross-examination.

By Mr. GRAVES.—What would the property

(Testimony of S. E. Hege.)

have sold for in January or thereabouts, 1918, for real money, either with the buildings or without them?

A. If a proposition actually had been made, Mr. Graves, if the property had been placed in the hands of one party for several months and he would have sufficient inducements, it would not have surprised me if it had sold for \$100,000 to \$150,000, buildings and all. In answering that question I am not thoroughly posted on the merits of the building. I am not here to testify as to the value of it. [53]

Yes, I think the buildings would add to the value of the premises. I say if it had been placed in the hands of one man, the right kind of a person, I would not be surprised if they had sold it. I think that harder properties than that have been sold at prices corresponding to that.

**Testimony of L. R. Stritesky, for Plaintiff
(Recalled).**

L. R. STRITESKY, recalled as a witness for plaintiff, after being first duly sworn, testified as follows:

Direct Examination.

By Mr. JONES.—I am an architect.

Mr. GRAVES.—We will admit his competency to speak as an architect; I won't deny it. I have used him myself.

WITNESS.—I am acquainted with the buildings on the Schade Brewing property. I was supervising architect and overlooked their construction. I

(Testimony of L. R. Stritesky.)

am acquainted with the property and was acquainted with it on January 24, 1918. I know its general condition and state of preservation.

Q. What was the property worth at that time, the building, the real property?

Mr. GRAVES.—To that I object, because it is not a subject that expert testimony can go to. A building that is constructed for a special purpose might be worth something for that special purpose. A building that was put up for a brewery might be worth something if they had breweries, but that is a luxury that has been denied us for some years.

A. The value in 1918 was \$184,057.

Cross-examination.

By Mr. GRAVES.—Generally, I got these figures by taking the original cost, figuring the replacement value and taking depreciation from it, assuming the rising cost of material, and also subtracting the depreciation from it. [54] I mean by depreciation the depreciation that any building is subject to that stands for any length of time. There is the depreciation due to the fact that the business for which it was intended no longer exists. It was damaged a little by the Milwaukee putting a road through there. Yes, I recall my testimony in the case of B. Schade Brewery against the Milwaukee.

Testimony of K. G. Malmgren, for Plaintiff.

K. G. MALMGREN, a witness called on behalf of plaintiff, after being first duly sworn, testified as follows:

Direct Examination.

By Mr. JONES.—My name is K. G. Malmgren. I reside at Spokane. I am an architect.

Mr. JONES.—Is there any question as to his competency, Mr. Graves?

Mr. GRAVES.—No, sir, of course not.

WITNESS.—I am acquainted with the buildings situated on the Schade Brewing property. I have made an examination of them. I am familiar with their construction, their dimensions, etc. I regard the value or worth of that property on January 24, 1918—the buildings at \$210,000.

Cross-examination.

(By Mr. GRAVES.)

Q. Is that all? A. Yes.

The building was specially constructed for brewery purposes and built solely for that. It could be converted to other purposes. It consists of machinery-room, vat-room, and all the special purposes of a brewery. That applies not only to the arrangement but the windows, doors, lights, ventilation, its fittings and all that sort of thing.

Q. What use would you convert it into to make it worth \$210,000?

A. Well, that is out of my jurisdiction, I might say.

(Testimony of K. G. Malingren.)

Q. Your jurisdiction only goes to the abstract value, whether anybody wants it or not? [55]

A. To the building.

Q. I say, to the abstract value, whether any use could be put to it or not?

A. I figured on the building, the cost of construction of the building.

Q. Cost of construction of the building?

A. Yes.

Redirect Examination.

(By Mr. JONES.)

Q. You stated you figured the building could be converted into other purposes than brewing purposes? A. Yes.

Q. That could be readily done, comparatively?

Mr. GRAVES.—I object. The witness says it is out of his jurisdiction.

The COURT.—What is your business?

Mr. GRAVES.—He is an architect.

The COURT.—He may answer.

A. In my judgment it could be used for cold storage. It has ice machines and lots of space for storage purposes. —

Testimony of Kurt J. Schade, for Plaintiff.

KURT J. SCHADE, a witness called on behalf of plaintiff, after being duly sworn, testified as follows:

Direct Examination.

By Mr. JONES.—By name is Kurt J. Schade. I am a son of B. Schade, and reside at Spokane. I

(Testimony of Kurt J. Schade.)

have resided there practically all my life. I was in Spokane in January, 1918. My father B. Schade is the president of the B. Schade Brewing Company. I was familiar with the machinery and contents of the B. Schade Brewing Company at that time. I know practically all the machinery and brewery equipment that was in the building at that time. I had an inventory of every piece of machinery there. Previous to [56] that time I made an inventory of the machinery and equipment. I would say about six weeks or about a month before it was turned over into the hands of Spokane & Eastern Trust Company. I took a complete inventory of everything that was there. That was in the year 1919, I think the summer of 1919.

Witness was then handed Plaintiff's Exhibit No. 7, purporting to be a copy of the inventory taken.

WITNESS.—That is complete except for a sixty-ton refrigerating ice machine which is not in this list. The list was taken after the ice machine was sold. The list is not dated. The list here is all the machinery listed except the one piece that I know of that was stipulated to be sold, that is the 60-ton refrigerating machine. That was stipulated to be sold on the 23d day of April, 1920. All of this list of stuff including the ice machine I have referred to was in place on the 24th day of January, 1918. I recall when the ice machine was taken away from the property.

Plaintiff's Exhibit No. 7 was then offered and admitted in evidence.

(Testimony of Kurt J. Schade.)

Cross-examination.

By Mr. GRAVES.—The machinery as described does not state for use—the use is not stated because there was a lot of machinery really in there that could be used for other purposes than a brewery. I had nothing to do with this matter except make the list. Nothing outside of that. I have been trying to sell it for the last year or two.

Testimony of John Land, for Plaintiff.

JOHN LAND, a witness called on behalf of plaintiff, after being first duly sworn testified as follows:

Direct Examination.

By Mr. JONES.—My full name is John Lang. I have resided at Spokane for 27 years last past. I am vice-president of the Inland Products Company. During my residence here at Spokane I have been installing refrigerating plants and building breweries and contracting engineer. I am familiar with brewing machinery and refrigerators [57] used in breweries and I have been connected with breweries here in Spokane, some in Missoula, Montana, Boise, Idaho, and some in British Columbia. I installed refrigerating machinery in the breweries and ice factories. I was acquainted with the machinery and equipment of the Schade Brewing Company in January, 1918. I have seen it.

Q. What in your judgment will be the value of that machinery and equipment generally—both the brewery machinery and the equipment generally?

(Testimony of John Land.)

A. Well, I would suggest that it is two different statements because there is some brewery machinery that could not be sold for more than 25%, and then there is some machinery in there like pumps, belts, refrigerating plants, shafting, pulleys, electric elevator, and electric materials that are probably worth 50% while the brewing machinery which is not in demand very much, although occasionally there is a market for it, would be sold for not more than 25%.

Q. What value would you place of everything, what value would you place on the property approximately?

A. I would say from \$30,000 to \$35,000.

The COURT.—Does that include the property that was sold?

A. It is the machinery which I looked at of late. I was over there just about a week ago. I don't know just exactly whether some of these pieces had been taken out then or not, but whatever was taken out did not amount to very much. My estimate included an ice-machine. That is what I said you know in regard to valuation, the percentage of brewing machinery. My estimate would include everything in that line. It included the ice machine in question.

Cross-examination.

By Mr. GRAVES.—I cannot exactly say how long it would have taken to have sold the machinery. There were markets for it. I should think [58] it could have been disposed of inside of a year if

(Testimony of John Land.)

it were properly handled, so that if they were trying to sell it for a year and a half and couldn't accomplish it, it is my idea it was not properly handled.

Mr. JONES.—If the Court pleases, it is just barely possible after an examination of the minutes we may have some of the entries we would like to offer in evidence. Otherwise our case is closed.

The COURT.—Very well, you may offer them at any time.

Whereupon, the following evidence was introduced on behalf of the defendants:

Testimony of O. C. Moore, for Defendants.

Mr. O. C. MOORE, a witness called on behalf of the defendants, after being first duly sworn, testified as follows:

Direct Examination.

By Mr. GRAVES.—My name is O. C. Moore. I am a resident of Spokane and a practicing counsel in this court. I represented the B. Schade Brewing Company and other defendants in a suit brought by the State Finance Company. It was a suit brought on a mortgage that had been given to the Spokane & Eastern Trust Company. The issues in that case had been made up and at that stage a proposition of making the deed here in question and giving the agreement in question came up. It was discussed between me and Mr. Edge representing the defendant, with the result that the deed was given and the agreement here in the case was executed. It was done after consultation and I don't think I offered

(Testimony of O. C. Moore.)

any opposition to it. I conferred with Mr. B. Schade and no one else. I frequently saw Mrs. Schade, but I do not believe she offered any advice or suggestion in regard to the transaction. I do not think I saw Mr. Stritesky in relation to it. I do not remember whether the suit was brought for hearing or set for hearing or trial at the time this agreement was entered into. I think it was reported for trial. I think the issues were all made up. That is my recollection of it. [59]

Cross-examination.

By Mr. JONES.—I represented not only B. Schade Brewing Company, but Mr. Schade and Mrs. Schade personally. I represented them all. There was a defense against the State Finance Company, that is my recollection.

Plaintiff's Exhibit No. 4 was then offered and admitted in evidence.

I was representing the B. Schade Brewing Company at the same time that I was representing B. Schade and Sophia Schade. There was an answer filed. I don't remember now what the defense was. I am inclined to think it was amended once or more, but I am not sure.

Plaintiff then offered Exhibit No. 5, which was admitted in evidence.

Plaintiff then offered Exhibit No. 6, which was admitted in evidence.

Testimony of Lester P. Edge, for Defendants.

LESTER P. EDGE, a witness called on behalf of defendants, after being duly sworn on oath, testified as follows:

Direct Examination.

By Mr. GRAVES.—My name is Lester P. Edge. I am a resident of Spokane and counsel in this court. I represented the State Finance Company, or the Spokane & Eastern Trust Company, on the foreclosure of the mortgage here in question. I have in mind the provisions in the contract and set out in the complaint that Mr. Schade might occupy the property and run some bottling works there without charge during the redemption period. This was quite a large property and it was necessary in order to expedite the sale of it that some one be around there so that it would not have a deserted, abandoned appearance. The Schades were interested in effecting a sale and we considered it best for the interest of everybody that it have more or less the appearance of occupancy for our [60] benefit as well as their own. The Spokane & Eastern was anxious to have a sale made, as anxious as the Schades were. The reason the Schades were permitted to occupy it was to obviate the expense of a caretaker. I did not see the Schades or Stritesky. Mr. Schade was a pretty sick man most all the time. When the suit was started Mr. Moore appeared representing all of the defendants and interposed some defense. We had sued Schade for

(Testimony of Lester P. Edge.)

deficiency judgment and upon his guarantee asked for a judgment upon all the rights we had under the notes and under the mortgage. The matter dragged along for a little while. Mr. Schade was very sick and this represented everything he had in the world, and the bank was not disposed to be hard on him or take a judgment on it. I so told Mr. Moore, and discussed it. I know the Schades personally very well and the bank was willing to give him a reasonable time. The bank had taken care of the taxes, fire insurance and everything else on the property and Mr. Schade was sick. He was not in a position to go into court. As counsel I felt he should have a very lengthy continuance on the ground of his physical condition, and the bank was willing to give him any reasonable length of time to make a turn financially and his counsel stated that if he was given this year and a half, it amounted to nearly two years from the time foreclosure was started, that they probably could make a turn during that time—make a sale. Probably his health would improve, and if I recall, I think Mr. Moore stated that they thought at that time they could get some of the stockholders in who would help to refinance their company and that they had the matter up with some of them to devise some way of raising the money to pay it off, and the bank was willing to give them any reasonable length of time to do it, and for that reason gave this deed and took back an option to repurchase which was six months longer than the period of redemption would

(Testimony of Lester P. Edge.)

be under a foreclosure. The negotiations continued between Mr. Moore and myself for some time, from September up to January. I think the case was set [61] for trial at the time. The negotiations were entirely conducted by Mr. Moore and myself, and he consulted with them because he would not agree to anything without first consulting them. We consulted back and forth with our clients. It was never suggested at any time that there was any intention of defrauding anybody or anything of that kind. The clause about his running the bottling works a while without rent was not put in for any other purpose than that indicated. The bank was extremely anxious, if possible, to have the Schade Company redeem the property. Yes, reorganize. They said they had been more or less associated with the Schade people. Many of the bank's friends owned stock in the concern. They had sold some of the stock to some of these people. They had endeavored or had recommended it as being good investment and they wanted these people to get back, reorganize, and save what they could out of it. As a matter of fact, I think during the negotiations the bank was willing to accept a reasonable discount at one time from its notes and mortgages if the matter could be handled in some way or wait a reasonable time on a reorganization; extend this paper in some way, that was talked.

Cross-examination.

By Mr. JONES.—The agreement was finally drawn. It was drawn after negotiation and this

(Testimony of Lester P. Edge.)

talk back and forth. I would not necessarily say that our negotiations and discussion culminated in the contract, or that that is the result of our negotiations.

The COURT.—That is what they were leading up to, and that is where they stopped.

Redirect Examination.

By Mr. GRAVES.—It is my judgment that the case was set for trial, I would not be positive, but if I had to pass one way or the other my recollection is that it was and it was continued once or twice pending these negotiations. [62]

Testimony of Sophia Schade, for Defendants.

SOPHIA SCHADE, a witness called on behalf of the defendants, after being first duly sworn on oath, testified as follows:

Direct Examination.

By Mr. GRAVES.—Mr. Schade is not well enough to come to court. Miss Korn is one of the stockholders; she is some relation; she is a niece, that is all, of Mr. Schade, but she has not been intimate with us for a couple of years, more than that. She got her stock from Mr. Schade. He didn't give it to her. She bought it with her own personal money that was left by her father.

Mr. GRAVES.—I want to offer in evidence the original Articles of Incorporation and the amended articles of incorporation. I suppose it is not necessary, Mr. Jones, to put in all of these; I can read in what I want?

Mr. JONES.—Subject to our objection.

Mr. GRAVES.—Certainly.

The COURT.—Read in what you desire.

Mr. GRAVES.—The object under the original agreement for which the corporation was formed are set out in the complaint, your Honor. The amended articles of incorporation I think were adopted in 1907, yes, at a meeting held on the 12th of April, 1907. The objects are stated as follows: "The objects for which this corporation is formed are: to purchase, buy, manufacture, sell and deal in all kind of malt products, to purchase, manufacture and sell ice, fuel and fuel products of all kinds; to purchase, lease, own, operate, mortgage, sell and convey a general brewing and malting business of beer and all malt products, and also in a general ice, fuel and fuel products business; to purchase, acquire, build, erect, own, operate, lease, mortgage, sell and convey breweries, malt houses, bottling works and ice and fuel manufacturing plants and machinery; to purchase, lease, own, operate, mortgage sell and convey real and personal property for any purpose which the corporation may deem expedient or necessary to aid in, increase, or [63] protect any business it may now or hereafter become engaged in." Then there is this little clause, "To do anything which is in the aid of that," which I do not consider necessary to read. Your Honor will remember that the original articles were conditioned solely to running a brewery, buying and selling such real estate as necessary for that purposes. I *serire* to read

in certain by-laws of the company.

Mr. JONES.—Subject to the same objection.

The COURT.—Yes.

Mr. GRAVES.—First I want to read Article 16, regulating meeting of stockholders as well as for monthly meeting of the trustees; “Article XVI. For the regular annual meeting of the stockholders as well as for the monthly meeting of the trustees, no special notice need be given and every trustee, officer or stockholder is to be bound by the provision made in these by-laws as far as the time and place is concerned of such meeting and any party taking stock in the corporation of this company shall take the same subject to the provisions and condition contained therein. Special stockholder’s meeting may be had provided the majority in amount of the stockholders consent to said meeting and sign a notice for the same and in that case the president when notified by said majority in amount of the shares of the stock in this company shall either give notice to all of the stockholders in the manner as the notice of special meetings for the board of trustees, or in case any stockholder or stockholders cannot be found within the city and county of Spokane, Washington, said notice shall be served by publication in some newspaper printed and published in said city and county of Spokane once a week for two consecutive weeks. The publication of such notice shall be intended for and be binding upon all the stockholders of this corporation.”

“Article IV. The office of treasurer and pres-

ident may be held by one and the same persons, who shall hold office for the term of 12 months or until his successor is chosen and qualified [64] unless such officer shall be removed for any cause whatever by the unanimous vote of the board of trustees. All other officers of said corporation can be removed by a majority vote of the board of trustees."

"Article V. The President shall preside at all meetings of the board of trustees and of the stockholders; he shall act as an inspector of election, sign all deeds, checks, contracts, on behalf of the corporation, and all certificates of the corporation, and shall purchase all materials and whatever is necessary for the purpose of carrying on the business of this corporation, and shall have the right to hire and discharge such persons and employees on such terms and conditions as he may deem necessary and to the best interest and advantage of the corporation, and shall have and exercise a general supervision and superintendency over the entire business and affairs and property of the corporation. Said president may delegate his authority, rights and powers from time to time as he in his judgment may deem to be to the best interest of the corporation."

**Testimony of Walter G. Merryweather, for
Defendants.**

WALTER G. MERRYWEATHER, a witness called on behalf of the defendants, after being first duly sworn on oath, testified as follows:

Direct Examination.

By Mr. GRAVES.—My name is Walter G. Merry-

(Testimony of Walter G. Merryweather.)

weather, of the firm of McCrea & Merryweather. I have been in the real estate business in this city 29 years. On the 24th day of January, 1918, I was called upon by the Spokane & Eastern Trust Company to value the real estate of the Schade Brewing Company down here by the river. I made such valuation. The way of it was I think Mr. Malott came in and asked me what I would hold that property at. I think I made the appraisement independently, as I recall it. I made the appraisement of the real estate independent of the building. I don't think [65] I gave any views or expressed any opinion as to the value of the buildings, or the property with the buildings on it, no, sir, I think I did not. No, I wouldn't consider that I was qualified to tell anything about the value of the buildings. I reported my appraisement to the Spokane & Eastern Trust Company. I appraised the real estate at \$20,000. I don't recollect that they told me why they wanted the appraisal. I know that Mr. Schade and the Spokane & Eastern had some business together. I am now of the opinion that it was a fair valuation. I think that was approximately. I don't believe that the property could have been sold within a reasonable time after that date for any more than that for cash. The state of the real estate market in Spokane was very quiet at that time. The last month or two or three months there has been a little more demand, but it is not what you would call good on any business property. Some residences have been selling but not business prop-

(Testimony of Walter G. Merryweather.)

erty, to speak of. The land as I recall it is between 75,000 and 80,000 square feet. Rough laying land between Trent Ave. and Sheridan St. and the river and rocky. In my opinion it could only be used for special purposes. It is entirely cut off by the streets and railroad tracks and the river from all other property around there. It has been used for this brewery business a great many years. The buildings are different buildings. They were constructed for and adapted to the brewery and bottling business. There was no demand at the time for property so situated. We had not been able to dispose of anything of that kind or character for some time.

Cross-examination.

By Mr. JONES.—I am not both a stockholder and director of the Spokane & Eastern Trust Company. I am a stockholder, that I am indirectly. Yes, I guess that is in my personal name, I can't tell you. My estimate of the value of the real property exclusive of the buildings is \$20,000. There is about 11 what we call ordinary [66] size lots 50 by 120. That would make, I imagine, about two acres or a little less than two acres. There would be about 70,000 square feet, I would say it is a little less than two acres. The buildings are not suitable for any other purpose than brewing purposes. The property there is located in near proximity to railroads. There is one goes underground almost adjoining there, and there is another tract there on an elevated line. In estimating its valuation I took into consideration the prospects of its being used for

(Testimony of Walter G. Merryweather.)

warehouse purposes owing to its location on railroads. In making this appraisalment I did not consult my partner, Mr. McCrea. He never paid any attention to the real estate business, consequently I did not consult him, that is to say any attention—very little attention. Mr. McCrea did not consult me on an appraisalment that he made in 1907 of the same property, now, that I recall. I do not know whether he made an appraisalment of \$100,000 for this property in 1907. I would not swear to it that I did not know about it, that is some time ago.

Testimony of A. D. Jones, for Defendants.

Mr. A. D. JONES, a witness called on behalf of defendant, after being duly sworn, testified as follows:

Direct Examination.

By Mr. GRAVES.—My name is Arthur D. Jones. I reside in Spokane. I am the head of Arthur D. Jones & Company, and have been in the city 34 years this year. I am acquainted with the Schade Brewing Company. I was called on about the 24th of January, 1918, by the Spokane & Eastern Trust Company to make an appraisalment of that property. I do not remember what individual called on me. I don't remember that they told me what they wanted to know for. They asked me for the value but I don't remember what they told me they wanted it for. They might have. I made an appraisalment and reported it to them. I made the appraisalment of just the real estate. I appraised it at that time

(Testimony of A. D. Jones.)

at \$25,000. [67] I think that was about the right price at that time. I couldn't tell anything about the value of the buildings on it. I did not investigate the buildings. I am not a builder. Yes, I know what it was built and used for. I know it could not be used for that purpose at this time. I think it would have been difficult to have gotten that much money for it in cash at that time. It is possible; during the past year that that sort of real estate has not been marketable for some time. There is no sale of any real estate, of any kind of real estate, has not been very marketable, except houses, until the last year or two. And another thing that holds that kind of property is the railroads have so much property that they can lease out to people to build warehouses on and their leases are made on pretty reasonable terms, and it is more profitable to build on property that they keep for that purpose, unless you can buy that kind of property very reasonable. I do not think of any general purpose that the property is available for, such as mercantile purposes, and that sort. It is not fit for that. Of course, there is Burgan on North Division Street. He is in the mercantile business, but I don't think it would be suitable for his kind of business. I do not understand that part of the property lies under the shores of the river.

Cross-examination.

By Mr. JONES.—I made the appraisalment in 1918. I don't remember the exact time. I appraised it at that time at \$25,000 at the request of the Spokane &

(Testimony of A. D. Jones.)

Eastern Trust Company. I do not remember the particular person that came to me about it. I do not know the reason why the appraisement was made excepting in a general way I supposed it was something in regard to settling up the estate or receivership or whatever the proceedings were. I didn't inquire into that. As a matter of fact, the appraisement was not made on its value as security for that amount. That wasn't the object of the appraisement. I tried to give the fair value [68] for selling or leasing or loaning. I tried to get at what I thought was a fair value. That was my best judgment as to what the fair value was for the land. There was 78,000 square feet, which would amount to about 11 lots as I understand it. That was in information about it. I didn't take any tape line to the premises and measure it. I didn't make any measurements at all. I appraised the ground as it was represented to me, which was as I have just told you. I knew the site and dimensions of the ground. The representation made was just as I told you a minute ago, about 78,000 square feet. There is other property within the same distance from the business center of town of that extent that has the same railroad facilities for warehouse purposes. I think other properties have been just as good. I think most any of these properties on most any of these railways have just as good facilities. I am not an officer or stockholder of the Spokane & Eastern Trust Company. I have no business relations with them now. I had

(Testimony of George M. Colburn.)

not at the time the appraisement was made. The appraisement was made exclusive of the building, just the ground is all I took into consideration.

Testimony of George M. Colburn, for Defendants,

GEORGE M. COLBURN, a witness called on behalf of the defendants, after being first duly sworn, testified as follows:

Direct Examination.

By Mr. GRAVES.—My name is George M. Colburn. I reside in Spokane. I am in the real estate business. I have been in the real estate business 21 years. I am in the office with Mr. Elmendorf and am employed by his firm. I am acquainted with the Schade Brewing Company property and have had occasion to examine the property on and off the last few years. I endeavored to sell it on probably 15 different occasions. I began at the request of Mr. Schade. I followed it up myself and got an idea I could sell it by having the co-operation of the Spokane & Eastern—. I negotiated with men that would be as likely as anybody I could find [69] or know of. I did not keep an accurate account of the number of times, I should say 12 or 15. I think you have known me long enough to know as to whether I am a pretty good salesman.

Q. I will ask you, during the period say from the 24th of January, 1918, down to the present time, if that property could have been sold for any amount and sold for what amount just as she stands, buildings, machinery, and everything?

(Testimony of George M. Colburn.)

The COURT.—What was the highest price you would have gotten for it during that time?

A. Well, I always placed a minimum of \$100,000. I was not authorized to sell it for \$100,000, but I was trying to get all the way from—I started at \$200,000, and came down to \$125,000, and I imagined if I got an offer of \$100,000 it would go through, but I didn't get the offer.

During that period I didn't get any offer at all. I always felt if I could find the right party he would buy it. I never felt we would have to go below \$100,000. Yes, sir, if we were lucky in striking the right man we thought we could get that for it, but we did not strike anybody that would give that for it. I would say as the building stands, building, machinery and all, it is worth that amount, in my judgment.

Q. If you could find the right man?

A. Yes, sir.

Cross-examination.

By Mr. JONES.—In the last figures I gave I included the machinery in the building. I figured that the machinery and the building would be the added inducement for a buyer to buy and I figured the whole thing at \$100,000. I have been with El-mendorf for two years February next. While I was seeking for a purchaser I was acting for El-mendorf & Pope. I am a salesman working on commission. Our office is divided into departments and I am in charge of the business properties department. Mr. Schade was the man that I first had

(Testimony of George M. Colburn.)

authority from to find a buyer. I took [70] the matter up with Mr. Schade direct, but I was acting as salesman for Elmendorf & Pope on a commission basis. I am still with Elmendorf. We took the matter up with 12 or 15 individuals or firms that we thought could well afford to buy the property, that in our opinion would have use for it, and therefore would buy it at the price. Some of the firms were in this city, and some of them were not. That was done by me representing Elmendorf & Pope in their behalf.

Testimony of Connor Malott, for Defendants.

CONNOR MALOTT, a witness called on behalf of defendants, after being first duly sworn, testified as follows:

Direct Examination.

By Mr. GRAVES.—My name is Connor Malott. I am vice-president of the Spokane & Eastern Trust Company.

Q. What relation does the State Finance Company have to the Spokane & Eastern?

A. It is the equitable owner of all the stock of the State Finance corporation.

I believe that the mortgage made by the Schade Brewing Company to the Spokane & Eastern Trust Company was assigned to the State Finance Company for the purpose of foreclosure and that was its sole interest in it. The real ownership continued in the Spokane & Eastern. When the settlement was negotiated, this deed and contract was

(Testimony of Connor Malott.)

negotiated, I represented the Spokane & Eastern. It was negotiated on the basis that the Spokane & Eastern owned the mortgage. This debt of \$50,000 arose out of a loan, *an* straight loan. The amount stated in that connection was the correct amount due, principal and not \$50,000 and other charges, making \$63.653.01. At that date there were outstanding delinquent taxes accrued with interest of \$5,895.45. Delinquent tax certificates were issued for \$5,485.45. They were taken up by the bank, the Spokane & Eastern. [71]

Q. Since the date of that contract, what amount has the bank paid out or expended in respect to the property?

Mr. JONES.—Of course, it is understood that all of this testimony is immaterial from our standpoint and we object to it on that ground.

The COURT.—Give the total, if you have the total there.

A. There is a number of items, taxes, insurance—

The COURT.—Give the total if you have the total there, add them up so you can give the total.

A. Yes, the total paid since then has been around \$8,000, since then paid out.

I have computed the interest from January 24, 1918, down to the present time and interest on other payments. We have here \$71,864.79, and interest is \$13,128.82, so that the advances and interest as of to-day are just under \$85,000. We have not received any income from the property whatever. We

(Testimony of Connor Malott.)

have made a few sales of personal property. Yes, I represented the Spokane & Eastern in negotiations which led up to this deed and the making of this contract. The original debt of \$50.000 ran a long time. We absorbed—the Spokane & Eastern Trust Company absorbed the Traders National Bank in May, 1914, and the debt, a large part of it, was taken over from the Traders and was carried forward until these proceedings liquidated it. During negotiations in these settlements I discussed the matter with Mr. Schade and Mrs. Schale and young Mr. Schade. I knew the financial condition of the company at that time. Unfortunately, the bank, some of the officers of the bank, owned stock in it, and some of their clients owned stock in it. I caused these appraisements to be made by these gentlemen who have testified here. The appraisements were made between the 28th day of January, and 3d of March, just in that two months' period. The prime purpose of the inquiry was to put this thing in condition that the stockholders of the Schade Brewing Company might protect their property. We had in [72] contemplation then taking the stockholders in a reorganization and so on. The purpose was to find out the value. I don't recall that I communicated to these gentlemen the purpose of the appraisals. I gave them no intimation as to whether we wanted it appraised high or low. All we wanted was to get an accurate appraisal as we could get. My opinion as to the value of the property is embodied in that circular letter under date of March 21, 1918, which

(Testimony of Connor Malott.)

was sent to the stockholders. The object of sending the letter to the stockholders was to get the stockholders over to a meeting to see if something could not be done to sell this property before the expiration of the period of redemption. I prepared the circular letter. A number of the stockholders came in. I wouldn't undertake to give you the number. This letter and this is the exhibit that goes with the letter.

Mr. GRAVES.—I will put them both in.

The letter admitted in evidence, marked Defendants' Exhibit No. 9.

WITNESS.—I should say seven or eight of the stockholders came in. The project was that we were acquiring this *prioerty* out of our investment, which was \$63,000 odd dollars, and we asked the stockholders to attend a meeting in January, 1918, where they could consider the situation, and we then proposed to them that if they believed the property had a value in excess of the amount of our claim, \$68,000, we would assign them the property on the payment of our debt, and we modified our proposition to the extent of saying if they couldn't take it over as an entirety we would let them come in as a personal party and by paying the amount of our debt and they would then become relative participants. That was reduced to writing in letter marked Defendants' Exhibit No. 8, and rejected by the Court.

Cross-examination.

By Mr. JONES.—I stated that the Spokane &

(Testimony of Connor Malott.)

Eastern Trust Company were [73] the equitable owners of the Finance Company. I mean there are four or five directors shares out to qualify some of the officers of the Spokane & Eastern Trust Company as directors of the Finance Company. I suppose the stock stands in their names, but it is the equitable owner of all of the stock. It is the legal owner of all excepting four of five shares. I do not believe that there has been a dollar of income on the property. There has been some sold or disposed of. That what was sold under stipulation referred to this morning. I wouldn't undertake to answer whether or not any property besides the large ice-machine was sold or disposed of. I do not know. Mr. Hubbard would know. When we sent them a letter I meant that we wanted to protect the equity of the stockholders of this property.

The letter was thereupon marked Plaintiff's Exhibit No. 9 for identification. Witness was then shown Plaintiff's Exhibit 9.

That is one of the letters I referred to as protecting the equities of stockholders.

Plaintiff's Exhibit No. 9 was offered and admitted in evidence.

Redirect Examination.

By Mr. GRAVES.—The notes were surrendered to the B. Schade Brewing Company when the deed was made. I am definitely clear that the mortgage was released on record.

Mr. GRAVES.—It may be stipulated that the mortgage was released?

(Testimony of J. M. Geraghty.)

Mr. JONES.—Under the general objection that the whole matter is immaterial.

Testimony of J. M. Geraghty, for Defendants.

J. M. GERAGHTY, a witness called on behalf of defendants, after being first duly sworn, testified as follows:

Direct Examination.

By Mr. GRAVES.—I am a resident of Spokane, and have been for 29 years. [74] I am a practicing lawyer, now corporation counsel for the city of Spokane. I was counsel for the Schade Brewing Company for a number of years, up to the time I became Corporation Counsel and possibly some time after. Mr. Schade came to me, I don't know when, I used to be in a formal way his counsel. I didn't know anything about this foreclosure proceeding. I knew that there was a mortgage on the property to the Spokane & Eastern for \$50,000. Running over a period of time I had several conferences with Mr. Malott and possibly others of the bank. I don't know that it had reference particularly to the foreclosure. It was just a general discussion as to the best way to meet the situation.

Q. What was the condition of the Schade Brewing Company at that time as to finances?

A. Well, now, or course, I don't know.

Q. What was your information as to whether they could pay off that mortgage or not?

Mr. JONES.—I object to that as being absolutely immaterial.

(Testimony of J. M. Geraghty.)

The COURT.—He may answer if he knows.

A. Of course the negotiations were predicated on their inability to meet the notes. The talk of foreclosure had run a year or two. The latter end of the discussion had reference to some adjustment that would avoid foreclosure. I cannot recall the details. I don't know just what you mean by negotiations. All I had was a very indefinite idea. Mr. Malott called me up several times, sometimes he came to see me and my going to see him as to what could be done—later had in mind avoiding foreclosure by having the property conveyed with the stipulation to buy it back or take it back after a period.

Q. Now, was that communicated to the Schades by you?

A. Well, all that I did was under their direction, under Mr. Schade's direction.

Mr. Malott and I were not able to get together. Before [75] it reached any conclusion I dropped out of it. These negotiations lasted, I am sure, several months.

Cross-examination.

By Mr. JONES.—I was acting under the immediate direction of the Schades. I assume I was acting for the brewery, the Schade Brewing Company. All I ever did was presumably for the Schade Brewing Company. I couldn't fix the date that I was negotiating on behalf of the Schade Brewing Company. I suppose I represented Mr. Schade or the brewery for ten years previous to that time. Mr.

(Testimony of J. M. Geraghty.)

Graves has identified the time as some time in 1917. I don't know just when. Mr. Schade had very little business other than the details of preserving the property after the state went dry and I was so pre-occupied by other business that I couldn't give his matter attention. There was no settlement or adjustment made by reason of my negotiations. The thing was all in the air when I ceased to have anything to do with it.

Testimony of Conner Malott, for Defendants, (Recalled).

CONNER MALOTT, recalled as a witness on behalf of defendants, after being first duly sworn, testified as follows:

Direct Examination.

By Mr. GRAVES.—Yes, I have a copy of the circular letter sent out by Mr. Schade, sent out to the stockholders of the Brewery Company. There were two such letters. The first is dated September 24, 1917. I have no knowledge as to whether the letter went to the stockholders or not other than what appears on the face of it. There were two letters sent out by Mr. Rutter as President of the Spokane & Eastern Trust Company.

Letter marked Defendants' Exhibit No. 10 was offered and admitted in evidence over the objection of counsel for plaintiff on the ground that it was immaterial and not properly identified.

Mr. GRAVES.—I offer in evidence letter of May 31, 1918.

(Testimony of Connor Malott.)

Mr. JONES.—We object to that as being immaterial and does not [76] show to whom it was sent and does not show that it was sent to the plaintiff in this case.

The COURT.—It will be admitted for what it is worth.

The letter was admitted in evidence and marked Defendants' Exhibit No. 11.

Testimony of Sophia Schade, for Defendants (Recalled).

SOPHIA SCHADE, recalled as a witness on behalf of the defendants, after being first duly sworn, testified as follows:

Direct Examination.

By Mr. GRAVES.—On being shown Defendants' Exhibit 10 she stated: At that time I had very little to do with the company. I knew that they were sending out—as far as I know it was sent, out to all of the stockholders. Of course I didn't mail them. I had the impression that it was sent to all the stockholders. I don't know whether it was or not. Referring to Exhibit 11, I guess that was sent to them all too. It was intended to be. That was the understanding. Most of the stockholders I guess were out of town except what there were here with the Spokane & Eastern Trust Company, and it was sent to those out of town, in town and elsewhere. Yes, Mr. Schade had a list of stockholders before him.

Cross-examination.

By Mr. JONES.—I cannot recollect because I really

(Testimony of Sophia Schade.)

did not take any part in sending these letters. As a matter of fact, I don't know whether it was sent to the plaintiff or not. I can't swear to it. I have no way of knowing because I never took any—you know I was not connected with the brewery until the last two or three years, since Mr. Schade has been ill.

Witness excused.

Whereupon an adjournment was taken to Thursday morning at 10 o'clock, at which time the following proceedings were had:

Mr. Jones moved the Court for permission to reopen plaintiff's case for the presentation of testimony by himself, which permission [77] was granted.

Testimony of Caleb Jones, for Plaintiff.

Mr. CALEB JONES, on being duly sworn, testified as follows:

That on or about July 15, 1919, on behalf of the plaintiff I made demand upon the B. Schade Brewing Company through its officers B. Schade as President to bring or cause to be brought an action against the defendant, Spokane & Eastern Trust Company, to set aside as illegal and void said warranty deed and agreement, and a few days later called on L. R. Stritesky, Secretary of said company, and made a like demand, and said officers refused to bring such an action or take any steps for a avoidance or disaffirmance of said deed and agreement.

Mr. Graves then moved the Court for permission to reopen defendants' cause and introduce in evidence Defendants' Exhibit No. 12, which permission

was granted and said exhibit was introduced and admitted in evidence.

[Endorsements]: Filed in the U. S. District Court, Eastern District of Washington. April 30, 1921. Wm. H. Hare, Clerk. H. J. Dunham, Deputy. [78]

In the District Court of the United States for the Eastern District of Washington, Northern Division.

No. 3281.

ERNA KORN,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST COMPANY,
THE B. SCHADE BREWING COMPANY,
B. SCHADE, and L. R. STRITESKY,

Defendants;

MUTUAL SECURITIES COMPANY,

Intervenor.

Petition for Appeal.

To the Honorable FRANK H. RUDKIN, District Judge of the District Court of the United States for the Eastern District of Washington, Northern Division:

The above-named plaintiff and the above-named intervenor feeling themselves aggrieved by the decree made and entered in this cause on the 3d day of November, 1920, do hereby appeal from said decree to the Circuit Court of Appeals of the United States for

the Ninth Circuit, for the reasons specified in the Assignment of Error filed herewith, and they pray that their appeal be allowed and that a citation be issued as provided by law and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit sitting at San Francisco, California, and your petitioners prays that a proper order touching the security required of them to perfect their appeals be made.

CALEB JONES,

Attorney for Plaintiff.

POST, RUSSELL & HIGGINS,

Attorneys for Intervenor.

The foregoing petition granted and appeal allowed upon giving bond conditioned as required by law in the sum of Three Hundred (\$300) Dollars.

Dated this 2d day of May, A. D. 1921.

FRANK H. RUDKIN,

Judge. [79]

In the District Court of the United States for
the Eastern District of Washington, Northern
Division.

No. 3281.

ERNA KORN,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST COMPANY,
THE B. SCHADE BREWING COMPANY,
B. SCHADE, and L. R. STRITESKY,

Defendants;

MUTUAL SECURITIES COMPANY,

Intervenor.

Assignments of Error.

And now on this 2d day of May, A. D. 1921, came the plaintiff represented by Caleb Jones, her counsel, and the intervenor Mutual Securities Company, represented by its counsel, Post, Russell & Higgins, and say that the decree entered in the above cause on the 3d day of November, 1920, is erroneous and unjust to plaintiff and intervenor:

(1) The Court erred in dismissing plaintiff and intervenor's complaints on the ground that the trustees of The B. Schade Brewing Company had power to enter into the agreement (Plaintiff's Exhibit "A") and execute the conveyance mentioned in paragraph 7 of plaintiff's complaint, for the reason that there is no controversy over the facts; that said contract is *prima facie* invalid, showing a violation of the fiduciary relation which exists between the trustees

and the company and the trustees and individual stockholders in this; that the officers executing the same received certain rights and concessions in said agreement mentioned as an inducement for its execution not enjoyed by the minority stockholders of said corporation; that the execution of the contract and the conveyance of all of the corporate properties thereunder was contrary to the Charter of The B. Schade Brewing Company, in violation of the statutes of the State of Washington, and an infringement upon the rights of the minority consenting [80] stockholders.

(2) The Court erred in dismissing plaintiff's and intervenor's complaints on the ground that the trustees of The B. Schade Brewing Company could dispose of all its corporate property without the unanimous consent of all the stockholders, for the reason that it is contrary to its Charter, in violation of the statutes of the State of Washington, and of the individual rights of the minority nonconsenting stockholders.

(3) The Court erred in dismissing plaintiff's and intervenor's complaints on the ground that the president and secretary of The B. Schade Brewing Company could dispose of all of the property of said corporation without the previous authorization of the board of trustees and all of the stockholders, for the reason that it is contrary to its Charter, in violation of the statutes of the State of Washington and of the individual rights of the minority nonconsenting stockholders.

(4) The Court erred in dismissing plaintiff's and

intervenor's complaints on the ground that the life of The B. Schade Brewing Company was not suspended by the conveyance of all of its property to the defendant Spokane and Eastern Trust Company, for the reason that said conveyance was contrary to the Charter of The B. Schade Brewing Company, in violation of the Statutes of the State of Washington and of the individual rights of the minority nonconsenting stockholders.

(5) The Court erred in dismissing plaintiff's and intervenor's complaints on the ground that the amendment of the State Constitution prohibiting the manufacture and sale of intoxicating liquors authorized the sale and conveyance of the B. Schade Brewing Company to the defendant Spokane & Eastern Trust Company in the manner and form alleged by plaintiff, for the reason that it is contrary to the Charter of The B. Schade Brewing Company, in violation of the statutes of the State of Washington and of the individual rights of the minority nonconsenting stockholders. [81]

(6) The Court erred in dismissing plaintiff's and intervenor's complaint on the ground that the inability of the defendant, The B. Schade Brewing Company, to pay its debt to the Spokane & Eastern Trust Company authorized and empowered the president and secretary of the Brewing Company to convey all its property to the creditor company in the manner and form alleged, for the reason that it is contrary to the Charter of The B. Schade Brewing Company, in violation of the statutes of the State of Washington and of the individual rights of the

minority nonconsenting stockholders.

(7) The Court erred in dismissing plaintiff's and intervenor's complaint on the ground that no fraud was committed or contemplated in the execution and procurement of the deed and contract between the defendants The B. Schade Brewing Company and the Spokane & Eastern Trust Company, for the reason that the contract itself shows that the officers of The B. Schade Brewing Company were acting for their own interests in a manner destructive of the corporation itself and in violation of the rights of the minority nonconsenting stockholders.

(8) The Court erred in dismissing plaintiff's and intervenor's complaint on the ground that the mortgage from The B. Schade Brewing Company had been satisfied of record, for the reason that it is not material to the issues presented by plaintiff and intervenor and does not excuse or make right the wrong complained of.

(9) The Court erred in dismissing plaintiff's and intervenor's complaint on the ground that the mortgagee had been placed in possession by the mortgagor and the mortgage debt had not been paid, for the reason that it does not afford a justification for the continued possession of the property wrongfully procured or for a violation of the rights of the minority nonconsenting stockholders of the B. Schade Brewing Company.

(10) The Court erred in dismissing plaintiff's and intervenor's complaints on the ground that the utmost relief that could properly be granted to either The B. Schade Brewing Company or its stockholders

would be the right of redemption, for the reason that the contract and conveyance to the Spokane & Eastern Trust [82] Company was beyond the power and authority of the officers executing the same on behalf of The B. Schade Brewing Company, was invalid, in violation of the statutes of the State of Washington, and of the rights of the minority non-consenting stockholders, and in contemplation of law not the act of The B. Schade Brewing Company so that its original right of ownership and possession were not changed thereby.

(11) The Court erred in dismissing the plaintiff's and intervenor's complaints on the ground that it did not appear that either The B. Schade Brewing Company or its stockholders are ready and willing to pay the amount due on redemption, for the reason that it is not material, not an issue in this cause or a matter on which the rights of the plaintiff or the intervenor as stockholders depend or a question that could be adjudicated in this court and cause or that would effect the validity of the contract and conveyance complained of.

(12) The Court erred in dismissing plaintiff's and intervenor's complaints on the ground that the complaints are entirely devoid of equity, for the reasons stated in each of the foregoing assignments of error.

(13) The Court erred in the making and entry of that certain decree on the 3d day of November, 1920, absolutely dismissing plaintiff's and intervenor's complaints in this action, for the reason that the plaintiff and intervenor had the individual right to

bring the action and to the relief prayed for; also for all the reasons set forth in the foregoing assignments of error.

CALEB JONES,
Attorney for Plaintiff.
POST, RUSSELL & HIGGINS,
Attorneys for Intervenor.

[Endorsements]: Filed in the U. S. District Court,
Eastern District of Washington. May 2, 1921.
Wm. H. Hare, Clerk. By H. J. Dunham, Deputy.
[83]

In the District Court of the United States for
the Eastern District of Washington, Northern
Division.

ERNA KORN,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST COMPANY,
THE B. SCHADE BREWING COMPANY,
B. SCHADE, and L. R. STRITESKY,

Defendants;

and

MUTUAL SECURITIES COMPANY, M. H. EG-
GLESTON and A. G. AVERY, as Executor,
Intervenors.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:
That we, Erna Korn the plaintiff above named, and
the Mutual Securities Company, intervenor above

named, as principals, and United States Fidelity and Guaranty Company, of Baltimore, Maryland, surety, acknowledge ourselves to be jointly indebted to Spokane & Eastern Trust Company, The B. Schade Brewing Company, B. Schade and L. R. Stritesky, defendants and appellees in the above cause, in the sum of Three Hundred (300) Dollars, conditioned that, whereas, on the 3d day of November, A. D. 1920 in the District Court of the United States for the Eastern District of Washington, Northern Division, in a suit depending in that court, wherein Erna Korn, was plaintiff, and Spokane & Eastern Trust Company, The B. Schade Brewing Company, B. Schade and L. R. Stritesky, defendants, and Mutual Securities Company, M. H. Eggleston and A. G. Avery, as Executor, Intervenor, numbered on the equity docket as 3281, a decree was [84] rendered against the said Erna Korn, plaintiff, and the said Mutual Securities Company, intervenor, and having obtained an appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, and filed a copy thereof in the office of the clerk of the court to reverse the said decree, and a citation directed to the said Spokane & Eastern Trust Company, The B. Schade Brewing Company, B. Schade and L. R. Stritesky, citing and admonishing each of them to be and appear at a session of the said United States Circuit Court of Appeals, for the Ninth Circuit, to be holden in the city of Seattle, State of Washington.

Now, if the said Erna Korn, plaintiff, and Mutual Securities Company, intervenor, shall prosecute their appeal to effect and answer all costs if they fail to

make their plea good, then the above obligation to be void; else to remain in full force and virtue.

Dated April 20th, 1921.

ERNA KORN.
MUTUAL SECURITIES COMPANY,
By KARL DE LAITTRE,

President.

UNITED STATES FIDELITY & GUAR-
ANTY COMPANY.

[Seal] By WILL A. KOMMERS,
Attorney in Fact.

The foregoing bond on appeal approved this 2d day
of May, A. D. 1921.

FRANK H. RUDKIN,
District Judge. [85]

In the District Court of the United States for the
Eastern District of Washington, Northern Di-
vision.

No. 3281.

ERNA KORN,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST COMPANY,
THE B. SCHADE BREWING COMPANY,
B. SCHADE, and L. R. STRITESKY,

Defendants;

MUTUAL SECURITIES COMPANY,

Intervenor.

Citation.

United States of America, to Spokane & Eastern Trust Company, The B. Schade Brewing Company, B. Schade, and L. R. Stritesky, GREETING:

You and each of you are hereby notified that in a certain case in equity in the United States District Court for the Eastern District of Washington, Northern Division, wherein Erna Korn appears as plaintiff, and Spokane and Eastern Trust Company, The B. Schade Brewing Company, B. Schade, and L. R. Stritesky, appear as defendants, and the Mutual Securities Company is intervenor, an appeal has been allowed the plaintiff and the intervenor therein to the United States Circuit Court of Appeals for the Ninth Circuit. You are hereby cited and admonished to be and appear in said court at San Francisco, California, thirty (30) days after the date of this citation to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done the parties in that behalf.

WITNESS the Honorable FRANK H. RUDKIN, Judge of the District Court of the United States for the Eastern District of Washington, Northern Division, this 2d day of May A. D. 1921.

FRANK H. RUDKIN,
District Judge.

Attest: W. H. HARE,
Clerk. [86]

Service of the above citation, by copy thereof admitted this 2d day of May, A. D. 1921.

GRAVES, KIZER & GRAVES,
Attorneys for Defendant Spokane & Eastern Trust
Company.

MRS. B. SCHADE,
Vice-President the B. Schade Brewing Company.

MRS. B. SCHADE,
Executrix of the Estate of B. Schade, Deceased.
L. R. STRITESKY. [87]

In the District Court of the United States, for the
Eastern District of Washington, Northern Di-
vision.

No. 3281.

ERNA KORN,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST COMPANY,
THE B. SCHADE BREWING COMPANY,
B. SCHADE, and L. R. STRITESKY,

Defendants;

MUTUAL SECURITIES COMPANY,

Intervenor.

Plaintiff's and Intervenor's Praecept for Transcript.

To W. H. Hare, Clerk of the Above-entitled Court:

You will please prepare a transcript of the record in this cause to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, under

the appeal heretofore perfected, and include in said transcript the following pleadings, proceedings and papers on file, to wit:

1. Plaintiff's bill of complaint.
2. Subpoena served on defendants, with return of service.
3. Demurrer of defendant Spokane & Eastern Trust Company.
4. Order overruling demurrer of Spokane & Eastern Trust Company.
5. Stipulation between plaintiff and Spokane & Eastern Trust Company, dated March 24, 1920.
6. Answer of defendant Spokane & Eastern Trust Company.
7. Default of defendants The B. Schade Brewing Company, B. Schade, and L. R. Stritesky, for failure to appear or answer.
8. Notice and petition to intervene by Mutual Securities Company, M. H. Eggleston, and A. G. Avery, executor of the last will and testament of Robert Morrill, deceased. [88]
9. Order allowing intervention of Mutual Securities Company, and denying that of M. H. Eggleston and A. G. Avery, executor.
10. The Court's decision on dismissal of plaintiff's and intervenor's complaints.
11. Final decree of November 3, 1920.
12. Notice of lodgment of statement of facts and the time and place of motion for approval, and acceptance of service thereon.
13. Order approving statement of facts.

14. Statement of facts with all exhibits of plaintiff and intervenor and of defendant Spokane & Eastern Trust Company attached thereto.
15. Petition for appeal and order granting it.
16. Assignments of error.
17. Bond on appeal and approval thereof by Judge.
18. Original citation, with proof of service.
19. Plaintiff's praecipe for transcript and acceptance of service thereon.

To this transcript you will please attach the usual certificate of full transcript and citation with proof of service thereof, which we will send you in due time, and also certificate under seal showing costs of the record and by whom paid. Such transcript is to be prepared as required by law and rules of this court and the rules of the United States Circuit Court of Appeals at San Francisco, California, before thirty (30) days from the date of the citation.

CALEB JONES,

Attorney for Plaintiff.

POST, RUSSELL & HIGGINS,

Attorneys for Intervenor.

Service of the above praecipe by copy thereof admitted this 2d day of May, A. D. 1921.

GRAVES, KIZER & GRAVES,

Attorneys for Defendant Spokane & Eastern Trust Company.

MRS. B. SCHADE,

Vice-President of B. Schade Brewing Company.

MRS. B. SCHADE,

Executor of the Estate of B. Schade, Deceased.

L. R. STRITESKY. [89]

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Eastern District of Washington,—ss.

I, W. H. Hare, Clerk of the District Court of the United States for the Eastern District of Washington, do hereby certify the foregoing typewritten pages to be a full, true correct and complete copy of so much of the record, papers, exhibits and other proceedings in the above and foregoing entitled cause as called for in the praecipe on appeal to the United States Circuit Court of Appeals and on file in the office of the clerk of said District Court, and that the same constitutes the record on appeal from judgment and decree of the District Court of the United States for the Eastern District of Washington to the Circuit Court of Appeals for the Ninth Judicial Circuit San Francisco, California.

I further certify that I hereto attach and hereto transmit the original citation issued in the cause.

I further certify that the cost of preparing and certifying the foregoing transcript is the sum of Thirty-two (\$32.00) Dollars and that the said sum has been paid to me by Caleb Jones, solicitor for complainant and appellant.

In witness whereof I have hereunto set my hand and affixed the seal of said District Court at Spokane, Washington, in said district, this 27th day of May, 1921.

[Seal]

W. H. HARE,
Clerk. [90]

[Endorsed]: No. 3693. United States Circuit Court of Appeals for the Ninth Circuit. Erna Korn and Mutual Securities Company, a Corporation, Appellants, vs. Spokane & Eastern Trust Company, a Corporation, The B. Schade Brewing Company, a Corporation, B. Schade and L. R. Stritesky, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Eastern District of Washington, Northern Division.

Filed May 31, 1921.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

Plaintiff's Exhibit No. 1.

In the District Court of the United States, Eastern
District of Washington, Northern Division.

No.—.

ERNA KORN,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST COMPANY,
THE B. SCHADE BREWING COMPANY,
B. SCHADE, and L. R. STRITESKY,
Defendants.

STIPULATION.

It is hereby stipulated and agreed by and between the defendant, the Spokane & Eastern Trust Company and the plaintiff, by and through their respec-

tive solicitors, that Erna Korn, if present in court at the trial of the above-entitled cause would testify as follows, to wit:

“That she has been informed and believes that the value of the matter in dispute between the plaintiff and defendants in this cause, is more than two hundred fifty thousand dollars.”

“That she is now and has been for more than ten years last past, a citizen and resident of the state of New York.”

“That during all the times mentioned in plaintiff’s bill of complaint, plaintiff has resided in New York City, New York, and had no notice or intimation of whatsoever kind, of the execution of that certain conveyance or deed mentioned in paragraph VII, of plaintiff’s bill of complaint, or of that certain agreement mentioned in paragraph VIII of plaintiff’s bill of complaint, and never consented or assented to the execution thereof, or became cognizant of their execution, until about the 1st day of June, 1919, when plaintiff was informed of the same by B. Schade; that plaintiff thereafter employed counsel in the premises.”

and that said statement of facts may be regarded as the testimony of the said Erna Korn, in her own behalf, and regarded as such by the Court at the trial of this cause hereafter to be had.

Dated this 6th day of April, A. D., 1920.

GRAVES, KIZER & GRAVES,
Solicitor, Spokane & Eastern Trust Co.
CALEB JONES,
Solicitor for Plaintiff.

[Endorsed]: No.—. In the District Court of the United States, Eastern District of Washington, Northern Division. Erna Korn, Plaintiff, vs. Spokane & Eastern Trust Co. et al., Defendants. Stipulation. Filed in the U. S. District Court, Eastern District of Washington. Oct. 18, 1920. W. H. Hare, Clerk.

No. 3693. United States Circuit Court of Appeals for the Ninth Circuit. Filed May 31, 1921. F. D. Monckton, Clerk.

Plaintiff's Exhibit No. 2.

In the District Court of the United States, Eastern
District of Washington, Northern Division.

ERNA KORN,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST COMPANY,
THE B. SCHADE BREWING COMPANY,
B. SCHADE and L. R. STRITESKY,

Defendants.

NOTICE OF PENDENCY OF ACTION.

NOTICE IS HEREBY GIVEN that an action has been commenced in the District Court of the United States, Eastern District of Washington, Northern Division, at Spokane, Washington, by the above-named plaintiff against the above-named defendant for the purpose of having set aside and declared null and void that certain Warranty Deed from The B. Schade Brewing Company to the Spokane & Eastern Trust Company, made and executed

on the 24th day of January, 1918, and recorded in Book 355 of Deeds, at page 599 of the Records of Spokane County, State of Washington, and to have declared null and void that certain contract or agreement made and executed on the 24th day of January, 1918, by the said Spokane & Eastern Trust Company, a corporation, party of the first part, and The B. Schade Brewing Company, a corporation, party of the second part, which is recorded in Volume "Q," Record of Cont. of said County, on page 51.

That the premises mentioned in each of said instruments and affected by this suit are situated in the city and county of Spokane, State of Washington, and are described as follows, to wit:

"Blocks Sixteen (16) and Seventeen (17) of Resurvey of the Second Addition to Third Addition to Railroad Addition to Spokane. in Spokane, in Spokane County, Washington, as per plat thereof recorded in Book 'C' of Plats on page 79, in the office of the Auditor of said County, also that part of Ferry Street, vacated, more particularly described as follows, to wit: Beginning on the Northwest corner of Lot Twelve (12) in Block Seventeen (17) of Resurvey of Second Addition to Third Addition to Railroad Addition; thence running Easterly and along the Southerly side of Ferry Street to the Northeast Corner of Lot One (1) in Block Seventeen (17) of said Addition; running thence northerly to a point *eight* (80) feet; thence running Westerly and along the North side of Ferry Street to the Southwest corner of Lot Four (4) in Block

sixteen (16) of said Addition; thence in a Southwesterly direction and along Sheridan Street to the Northwestern corner of said Lot Twelve (12) in said Block Sixteen (16), being the place of beginning.

“Also that part of the vacated alley in said Block Seventeen (17), more particularly described as follows, to wit: Beginning on the Northwest corner of Lot Thirteen (13) in Block Seventeen (17) of Second Addition to Railroad Addition to Spokane, running thence East and along the Southerly side of said alley to the Northeast corner of Lot Thirty (30) of said Block Seventeen (17) and to the West side of Hatch Street; running thence North along the West side of Hatch Street Fifteen (15) feet to a point; thence running West along the Northerly side of said alley to the Southwest corner of Lot Twelve (12) in said Block Seventeen (17) of said Addition; running thence South along the East side of Sheridan Street, Fifteen (15) feet to the place of beginning;

“Excepting from the above-described premises the property appropriated by the Spokane Terminal Company, a corporation, by decree dated September 7, 1905, entered in Journal 93 on page 81, and recorded in the Auditor's office in Book 166 of Deeds on page 156; and excepting from the above described premises the property appropriated by the Northern Pacific Railway Company, by decree dated November 7, 1905, recorded in Journal 93, on Page 202, and

recorded in the office of the Auditor of Spokane County, in Book 165 of Deeds on page 421.

“And including as far as they now are or may hereafter belong to or be used with the building on the said premises, all elevators, heating and ventilating apparatus, all gas, electric light and other fixtures, and all machinery and mechanical appliances of every kind and character, now or hereafter placed in the brewing and bottling plants of said grantor, with all other fixtures and appliances therein used as a part of said brewing and bottling plants, together with all privileges, hereditaments and appurtenances thereunto now or hereafter belonging or otherwise appertaining, and the rents, issues and profits arising therefrom; it being the intention of the grantor to convey hereby the lands above described, with the brewing and bottling plants thereon, with the trade fixture and appliances therein contained, as an entirety.”

CALEB JONES,
Attorney for Plaintiff.

[Endorsed]: No. 562726. In the District Court of the United States, Eastern District of Washington, Northern Division. Erna Korn, Plaintiff, vs. Spokane & Eastern Trust Company, et al., Defendants. Notice of Pendency of Action. Filed in the U. S. District Court, Eastern District of Washington. Oct. 18, 1920. W. H. Hare, Clerk.

No. 3693. United States Circuit Court of Appeals for the Ninth Circuit. Filed May 31, 1921. F. D. Monckton, Clerk.

State of Washington,
County of Spokane,—ss.

This is to certify that this instrument was filed for record in the office of the Auditor of Spokane County at the request of C. Jones on this Aug. 16, 1919, at 11:40 A. M. and recorded in volume "N," Records of Tr. of Judge, of said County on page 258.

J. A. STEWART,
County Auditor.

Van N. Murphy, Deputy.

Recorded Aug. 22, 1919.

By ARNOLD C. HINTZ,
Deputy.

Fee, \$1.30.

Plaintiff's Exhibit No. 3.

In the District Court of the United States, for the
Eastern District of Washington, Northern Division.

ERNA KORN,

Plaintiff,

vs.

SPOKANE & EASTERN TRUST COMPANY,
THE B. SCHADE BREWING COMPANY,
B. SCHADE and L. R. STRITESKY,
Defendants.

STIPULATION.

IT IS STIPULATED AND AGREED by and between counsel for the respective parties, that the defendant, the Spokane & Eastern Trust Company,

may sell and convey that certain large Ice Machine, complete, with all tools, equipment and accessories thereunto belonging, for a consideration of Twelve Thousand (\$12,000) Dollars, to A. E. Edwards, of Seattle, Washington, it being a part of the personal property, mentioned in that certain deed and agreement referred to in plaintiff's bill of complaint in this cause, and the proceeds of such sale shall be held in trust in lieu of said property, and subject to the decree of this court in the same way as though said property had not been converted into cash. That the foregoing stipulation is entered into without prejudice to either of the parties to this action.

Dated this 23d day of April, 1920.

CALEB JONES,

Attorney for Plaintiff.

GRAVES, KIZER, and GRAVES,

Attorneys for Defendant S. & Eastern Trust Company.

[Endorsed]: No. ——. In the District Court of the United States for the Eastern District of Washington, Northern Division. Erna Korn, Plaintiff, vs. Spokane & Eastern Trust Co., et al., Defendants. Stipulation. Filed in the U. S. District Court, Eastern District of Washington, Oct. 18, 1920. W. H. Hare, Clerk.

No. 3693. United States Circuit Court of Appeals for the Ninth Circuit. Filed May 31, 1921. F. D. Monckton, Clerk.

Plaintiff's Exhibit No. 4.

In the Superior Court of the State of Washington,
in and for the County of Spokane.

No. 55,148.

STATE FINANCE COMPANY, a Corporation,
Plaintiff,

vs.

B. SCHADE BREWING COMPANY, a Corpora-
tion, B. SCHADE and SOPHIA SCHADE,
His Wife,

Defendants.

AMENDED COMPLAINT.

Plaintiff complains and for cause of action alleges:

1. That plaintiff is now and at all times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of Washington, and has paid its annual license tax last due to the State of Washington.

2. That the defendant B. Schade Brewing Company is a corporation organized and existing under and by virtue of the laws of the State of Washington, with its principal place of business in the City of Spokane, Spokane County, Washington.

3. That the defendants B. Schade and Sophia Schade now are and at all times herein mentioned have been husband and wife, and on the dates when the notes herein described were executed were the owners as community property of stock in the de-

fendant B. Schade Brewing Company, a corporation.

4. That the obligation hereinafter alleged to have been incurred by said B. Schade was incurred by him on behalf of and for the benefit of the community consisting of said Sophia Schade and B. Schade, defendants, in consideration of the benefits to be derived by said community as stockholders in said defendant company on account of said loan and in consideration of the original consideration passing to said defendant corporation, and in consideration of the several extensions or renewals of said notes.

5. That on the dates hereinafter mentioned, defendant B. Schade Brewing Company, a corporation, made, executed and delivered to the Spokane & Eastern Trust Company its certain promissory notes in writing in the amounts, with the due dates and bearing interest as follows:

Date.	Amount.	When Due.	Interest.
Aug. 10, 1914	\$5,000	Nov. 10, 1914	7% from maturity.
" 10, 1914	5,000	" 10, 1914	7% " "
" 10, 1914	10,000	" 10, 1914	7% " "
Sept. 4, 1914	15,000	Dec. 4, 1914	8% " "
" 4, 1914	5,000	" 4, 1914	8% " "
Oct. 3, 1914	5,000	Jan. 2, 1915	8% " "
" 3, 1914	5,000	" 2, 1915	8% " "

And the payment of the principal, interest and attorneys' fees provided for in said notes and each of them was at the date of their execution guaranteed by said B. Schade personally and on behalf of the community consisting of B. Schade and Sophia Schade, his wife.

6. That on the dates when said notes above set forth became due, renewal notes therefor of like tenor and effect were executed and delivered by said defendant B. Schade Brewing Company and B. Schade to said Spokane & Eastern Trust Company, as follows:

Date.	Amount.	When Due.	Interest.
Nov. 10, 1914	\$15,000	Feb. 10, 1915	8% from maturity.
" 10, 1914	5,000	" 10, 1915	8% " "
Dec. 4, 1914	20,000	Mar. 4, 1915	12% " "
Jan. 2, 1915	10,000	Apr. 3, 1915	12% " "

7. That on the dates when said notes last above described became due, renewal notes therefor of like tenor and effect were executed and delivered by said B. Schade Brewing Company and B. Schade to said Spokane & Eastern Trust Company, as follows:

Date.	Amount.	When Due.	Interest.
Feb. 10, 1915	\$5,000	May 10, 1915	7% from maturity.
" 10, 1915	15,000	" 10, 1915	12% " "
Mar. 4, 1915	20,000	June 4, 1915	12% " "
Apr. 3, 1915	10,000	July 3, 1915	12% " "

8. That on the dates when said notes last above described became due, renewal notes therefor of like tenor and effect were executed and delivered by said B. Schade Brewing Company and B. Schade to said Spokane & Eastern Trust Company, as follows:

Date.	Amount.	When Due.	Interest.
May 10, 1915	\$15,000	Aug. 10, 1915	12% from maturity.
" 10, 1915	5,000	" 10, 1915	7% " "
June 4, 1915	20,000	Sept. 4, 1915	12% " "
July 3, 1915	10,000	Oct. 3, 1915	12% " "

9. That on the dates when the notes executed on May 10, 1915, and June 4, 1915, became due, renewal notes therefor were executed by said B.

Schade Brewing Company and B. Schade, as follows:

Date.	Amount.	When Due.	Interest.
Aug. 10, 1915	\$15,000	Nov. 10, 1915	12% from maturity.
" 10, 1915	5,000	" 10, 1915	7% " "
Sept. 4, 1915	20,000	Dec. 4, 1915	12% " "

10. That on April 3, 1916, defendants B. Schade Brewing Company and B. Schade in renewal of the notes executed and delivered on July 3, 1915, August 10, 1915, and September 4, 1915, made, executed and delivered to the Spokane & Eastern Trust Company their certain promissory notes in the words and figures as follows, to wit:
\$25,000.

Spokane, Washington, April 3rd, 1916.

One year after date, without grace, for value received, I promise to pay to the order of Spokane & Eastern Trust Company, at the office of said company, Spokane, Washington, Twenty-five Thousand and no/100 Dollars in Gold Coin of the United States of America, with interest at 8 per cent per annum, from date, until maturity, and one per cent. per month from maturity until paid, payable quarterly in advance and if any part of this note or interest be not paid when due, it shall cause the whole to become due and payable at once, without further notice. I will also pay to the holder any expense to which it may be put in the collection or attempted collection of principal or interest. In case action is brought to collect this note, I agree that the venue of such action may be laid in Spokane County, Washington, and that the action may be there maintained without regard to the residence of defend-

ants, and that in any action brought hereupon I will pay such sum as the court may adjudge reasonable as attorney's fees. Each and every party signing or endorsing this note hereby waives presentment, demand, protest, and notice of non-payment thereof, and declares himself bound thereon as a principal and not as a surety.

B. SCHADE BREWING COMPANY,

By W. J. MRAZ,

Vice-President.

By L. R. STRITESKY,

Secretary.

Renewal note secured by mortgage.

Postoffice Address: ———.

For cause received, I hereby guarantee the payment of the principal of within note, and the interest and attorney's fees therein provided for, at maturity, and at any time thereafter, until paid, and I hereby waive demand of payment, presentation for payment, notice of nonpayment, and notice of protest. This guarantee is absolute, and the payee upon default may, at its election proceed immediately against the guarantor or, at its option against the guarantor and principal debtor jointly or severally.

I hereby agree that the venue of any suit brought hereon may be laid in Spokane County, Washington, at the option of the holder hereof.

(Signed) B. SCHADE.

\$25,000.00. Spokane, Washington, April 3, 1916.

One year after date, without grace, for value received, I promise to pay to the order of Spokane &

Eastern Trust Company, at the office of said company, Spokane, Washington, Twenty-five Thousand and no/100 Dollars in Gold Coin of the United States of America, with interest at 8 per cent per annum from date until maturity, and one per cent per month from maturity until paid, payable quarterly, in advance, and if any part of this note or interest be not paid when due, it shall cause the whole to become due and payable at once, without further notice. I will also pay to the holder any expense to which it may be put in the collection or attempted collection of principal or interest. In case action is brought to collect this note, I agree that the venue of such action may be laid in Spokane County, Washington, and that the action may be there maintained without regard to the residence of defendants, and that in any action brought hereupon I will pay such sum as the court may adjudge reasonable as attorney's fees. Each and every party signing or endorsing this note hereby waives presentment, demand, protest, and notice of nonpayment thereof, and declares himself bound thereon as a principal and not as a surety.

B. SCHADE BREWING COMPANY.

By W. J. MRAZ,

Vice-President.

By L. R. STRITESKY,

Secretary.

Renewal note secured by mortgage.

Postoffice Address: Box 1685, City.

For value received, I hereby guarantee the payment of the principal of within note, and the interest

and attorney's fees therein provided for, at maturity, and at any time thereafter, until paid, and I hereby waive demand of payment, presentation for payment, notice of nonpayment, and notice of protest. This guarantee is absolute, and the payee upon default may, at its election, proceed immediately against the guarantor or, at its option, against the guarantor and principal debtor jointly or severally.

I hereby agree that the venue of any suit brought hereon may be laid in Spokane County, Washington, at the option of the holder hereof.

(Signed) B. SCHADE.

Which said guarantee above set forth and so signed by said B. Schade was signed on his own behalf and on behalf and for the benefit or the community consisting of said B. Schade and Sophia Schade, his wife.

11. That on October 5, 1914, said B. Schade Brewing Company, defendant, for the purpose of securing the payment of Fifty Thousand (\$50,000) Dollars then owing by it to the said Spokane & Eastern Trust Company, and evidenced by certain notes aggregating said sum and then unmatured, as above set forth, and for the purpose of securing any renewal notes that might be given in place of said notes then in force, executed and delivered to the Spokane & Eastern Trust Company its certain indenture of mortgage, a full, true and correct copy of which said mortgage is hereunto attached marked Exhibit "A," and made a part of this amended complaint.

12. That when said mortgage became due on October 3, 1915, said defendants B. Schade Brewing

Company, B. Schade and Sophia Schade represented to said Spokane & Eastern Trust Company that said defendants B. Schade Brewing Company, said B. Schade and Sophia Schade were unable to pay said notes or said mortgage and no steps were taken by said Spokane & Eastern Trust Company towards the foreclosure of said mortgage or action upon said notes, and on April 3, 1916, the time for the payment of said mortgage was extended to April 3, 1917.

13. That said notes and mortgage have been heretofore transferred and delivered by said Spokane & Eastern Trust Company to the plaintiff herein, and plaintiff is now the lawful owner and holder of the same.

14. That no part of the principal of said notes has been paid, but the interest has been paid on the same to July 3, 1916, and no further, and there is now due and owing to the plaintiff on account of said notes and mortgage the sum of Fifty Thousand (\$50,000) Dollars with interest thereon at eight per cent per annum from July 3, 1916.

15. That said mortgagors wholly neglected and refused to pay insurance premiums upon policies of insurance upon the premises herein mortgaged, and plaintiff herein and its predecessors in interest in order to protect their security were compelled to pay and did pay the following sums on account of insurance premiums on said premises, to wit:

December 1, 1916.....	\$ 93.75
December 1, 1916.....	100.25
December 1, 1916.....	37.50
January 19, 1917.....	29.25

May 10, 1917.....	45.00
May 10, 1917.....	29.25
May 10, 1917.....	38.15
November 2, 1917.....	169.40

which said items, according to the terms of said mortgage, bear interest at the rate of twelve per cent per annum from their respective dates of payment by said mortgagee.

16. That the sum of Twenty-five Hundred (\$2500.00) Dollars is a reasonable sum to be allowed plaintiff as an attorneys' fee in this action.

WHEREFORE, plaintiff prays for a decree that there is now due and owing it on account of said mortgage the sum of Fifty Thousand (\$50,000) Dollars with interest at eight per cent per annum from July 3, 1916; the sum of \$237.50 with interest thereon from December 1, 1916, at twelve per cent per annum; the sum of 29.25 with interest thereon at twelve per cent per annum from January 19, 1917; the sum of \$85.15 with interest thereon at twelve per cent per annum from May 10, 1917, the sum of \$29.25 with interest thereon at twelve per cent per annum from May 19, 1917, and the sum of \$169.40 with interest thereon at twelve per cent per annum from November 2, 1917, together with \$2,500.00 attorneys' fees and costs of suit.

That the usual decree may be made for the sale of said mortgaged premises in the manner provided by law, and that the proceeds arising therefrom be applied toward the payment of the amounts found due to the plaintiff aforesaid; that the defendants and each of them and all persons claiming from, through

or under them, and all persons claiming to have acquired any interest in or lien upon the said mortgaged premises subsequent to the execution of said mortgage may be forever barred and foreclosed of and from all right, title, interest, estate, claim, lien, and equity of redemption in and to or upon the said mortgaged premises and every part thereof; that plaintiff have judgment against defendants B. Schade Brewing Company, B. Schade and the community consisting of B. Schade and Sophia Schade, husband and wife, for any deficiency which may remain after applying all the proceeds of said sale properly applicable to the satisfaction of said judgment; that the plaintiff herein be authorized and directed to forthwith enter into and upon the premises hereinbefore described and take possession thereof, and apply the rent, issues and profits thereof upon the indebtedness hereby secured, and that an accounting be had of the same from the date of the maturity of said indebtedness as provided in said mortgage; that plaintiff or any other party to this suit may become a purchaser or purchasers at said sale, and that the purchaser be let into possession of said premises upon production of Sheriff's Certificate of Sale, and that plaintiff be given such other, further and different relief as to the court may seem just.

McCARTHY & EDGE,
Attorneys for Plaintiff.

State of Washington,
County of Spokane,—ss.

Lester P. Edge, being first duly sworn, on oath

deposes and says: That he is one of the attorneys for plaintiff in the above-entitled action and makes this verification for and on its behalf; that the above action is founded on written instruments for the payment of money only, which said instruments are in the possession of affiant; that he has read the above and foregoing amended complaint, knows the contents thereof, and that the allegations therein contained are true.

LESTER P. EDGE.

Subscribed and sworn to before me this 2d day of November, 1917.

JOSEPH McCARTHY,
Notary Public for Washington, Residing at Spokane, Wash.

EXHIBIT "A."

The grantor, the B. Schade Brewing Company, a corporation organized and existing under the laws of the State of Washington, for and in consideration of the sum of Fifty Thousand (\$50,000.00) Dollars, in hand paid, conveys and warrants to the Spokane and Eastern Trust Company, a corporation organized and existing under the laws of the State of Washington, the following described real estate situate in the County of Spokane, State of Washington, to wit:

Blocks Sixteen (16) and Seventeen (17) of Resurvey of the Second Addition to Third Addition to Railroad Addition to Spokane, in Spokane County, Washington, as per plat thereof recorded in Book "C" of Plats on page 79, in the office of the Auditor of said county, also that part of Ferry

Street vacated, more particularly described as follows, to wit: Beginning on the Northwest corner of Lot Twelve (12) in Block Seventeen (17) of Resurvey of Second Addition to Third Addition to Railroad Addition; thence running easterly and along the southerly side of Ferry Street to the Northeast corner of Lot One (1) in Block Seventeen (17) of said Addition; running thence northerly to a point eighty (80) feet; thence running westerly and along the north side of Ferry Street to the Southwest corner of Lot Four (4) in Block Sixteen (16) of said Addition; thence in a Southwesterly direction and along Sheridan Street to the Northwest corner of said Lot Twelve (12) in said Block Sixteen (16), being the place of beginning.

Also that part of the vacated alley in said Block Seventeen (17), more particularly described as follows, to wit: Beginning on the Northwest corner of Lot Thirteen (13) in Block Seventeen (17) of Second Addition to Third Addition to Railroad Addition to Spokane, running thence east and along the southerly side of said alley to the Northeast corner of Lot Thirty (30) of said Block Seventeen (17) and to the West side of Hatch Street; running thence North along the West side of Hatch Street Fifteen (15) feet to a point, thence running West along the Northerly side of said alley to the Southwest corner of Lot Twelve (12) in said Block Seventeen (17) of said Addition; running thence South and along the east side of Sheridan Street, Fifteen (15) feet to the place of beginning.

Excepting from the above described premises the

property appropriated by the Spokane Terminal Company, a corporation, by decree dated September 7, 1905, entered in Journal 93, on page 81, and recorded in the Auditor's office in Book 166 of Deeds on page 156; and excepting from the above described premises the property appropriated by the Northern Pacific Railway Company, by decree, dated November 7, 1905, recorded in Journal 93, page 202, and recorded in the office of the Auditor of Spokane County, in Book 165 of Deeds on page 421.

And including as far as they now are or may hereafter belong to or be used with the building on the said premises, all elevators, heating and ventilating apparatus, all gas, electric light and other fixtures, and all machinery and mechanical appliances of every kind and character, now or hereafter placed in the Brewing and Bottling plants of said grantor, with all other fixtures and appliances therein used as a part of said Brewing and Bottling plants, together with all privileges, hereditaments and appurtenances thereunto now or hereafter belonging or otherwise appertaining, and the rents, issues and profits arising therefrom; it being the intention of the grantor to convey hereby the lands above described, with the brewing and bottling plants thereon, with the trade fixture and appliances therein contained, as an entirety.

This instrument is intended as a mortgage to secure the performance of the covenants hereinafter stipulated and to secure the payment of three certain

promissory notes made by the grantor, in favor of the grantee, as follows:

One note for Ten Thousand (\$10,000.00) Dollars, dated October 3rd, 1914, due ninety days after date. One note for Twenty-Thousand (\$20,000.00) Dollars, dated August 10, 1914, due ninety days after date, one note for Twenty Thousand (\$20,000.00) Dollars, dated September 4, 1914, due ninety days after date. All of said notes draw interest at the rate of eight per cent per annum, payable quarterly in advance; it being understood that said notes will be renewed upon the same terms, as they fall due, from time to time, for the period of one year from October 3, 1914, it being the intention that such renewal shall not extend the date of payment beyond October 3, 1915, and that the whole of said indebtedness shall be due and payable on that date.

It is further agreed and understood between the parties hereto that if the said Spokane and Eastern Trust Company shall loan any further sum or sums of money to the grantor, in addition to the Fifty Thousand (\$50,000.00) Dollars herein specifically mentioned, this mortgage shall stand as security for such additional advances, and the said Spokane and Eastern Trust Company shall be entitled, as to such additional advances, to all of the rights and remedies herein provided as to the said sum specifically mentioned.

NOW THEREFORE, if the grantor shall pay the said principal and interest as in said notes provided and shall also keep and perform all and singular the covenants and agreements hereinafter con-

tained on the grantor's part to be kept and performed, then this deed shall be null and void, otherwise to be and remain in full force and effect.

The grantor further covenants and agrees with the grantee as follows:

1. That the grantor will pay the sums of money as above specified and the interest thereon.

2. That at all times during the continuance of this mortgage and until said mortgage shall be fully paid or released the grantor will keep the buildings and other property covered by this mortgage on said premises unceasingly insured against loss by fire in such first-class, responsible stock insurance company or companies as shall be satisfactory to the grantee, for at least the sum of Thirty-one thousand nine hundred (\$31,900.00) Dollars, payable in case of loss to the grantee, to the amount then secured by this mortgage, with a mortgagee and subrogation clause satisfactory to the grantee, attached to such policy or policies of insurance; that if a greater amount of insurance is placed upon said buildings then the amount aforesaid, all such insurance shall be made payable in case of loss as aforesaid, and with like subrogation clause, and that all of said insurance policies shall be at all times deposited with the grantee, and that all premiums on all of the policies of insurance shall be promptly paid when due. In case of loss and payment by any insurance company, the amount of the insurance money paid shall be applied either on the indebtedness secured hereby or in rebuilding or restoring the damaged buildings as the grantee may elect.

3. That the grantor hereby agrees to pay all taxes and assessments, general or special, which may be assessed upon the said land, premises or property, or upon the interest of the grantee therein; or upon this mortgage or the money secured hereby; without regard to any law heretofore enacted or hereafter to be enacted, imposing payment of the whole or any part thereof, upon the grantee, that upon violation of this undertaking or the passage by the state of a law imposing payment of the whole or any portion of any of the taxes aforesaid upon the grantee, or upon the rendering by any court of competent jurisdiction of a decision that the undertaking by the grantor as herein provided, to pay any taxes or assessments, is legally inoperative, then, and in any such event, the debt hereby secured, without deduction, shall, at the option of the grantee become immediately due and collectible, notwithstanding anything contained in this mortgage or any law hereafter enacted. The grantor further agrees not to suffer or permit all or any part of said taxes or assessments to become or remain delinquent, nor to permit the said property or any part thereof, or any interest therein, to be sold for taxes, and further agrees to furnish annually to the grantee, on or before the fifteenth day of November, the certificate of the proper authority, showing full payment of all such taxes and assessments.

4. That in case the grantor shall fail to keep in force insurance on the mortgaged property as hereinbefore provided, or shall fail to pay all or any

part of the taxes or assessments which may be levied or assessed against the mortgaged property or the indebtedness secured hereby, or any interest of the grantee, either in said mortgaged premises or the indebtedness secured hereby, the grantee, may, at its option, procure said insurance and pay said taxes and assessments, or redeem the property from tax sale, if it has been sold, and the grantor agrees to repay to the grantee any and all sums which it may have paid or for which it shall have become obligated in procuring said insurance or paying said taxes, or redeeming said property from any tax sale, together with interest at twelve per cent. per annum from the date the same shall have been paid, and the same may be recovered by suit, and this mortgage shall stand as security therefor. In case the grantee elects to advance insurance premiums or taxes, the receipt of an official of the insurance company in which such insurance is placed, shall, with respect to any such insurance premiums, be conclusive evidence as between the parties to this mortgage of the amount and the fact of payment thereof, and the receipt of the proper public official shall, with respect to the taxes or assessments, be conclusive evidence as between the parties to this mortgage of the amount and validity and the fact of payment thereof.

5. That the grantor will pay to the grantee any and all sums, including costs, expenses and reasonable attorney's fees which it may incur or expend in any proceedings, legal or otherwise, to sustain the lien of this mortgage or its priority or in defend-

ing against the liens or claims of any person or persons asserting priority to this mortgage, or in the discharge of any such claim or lien, or in connection with any suit at law or in equity to foreclose this mortgage or to recover any indebtedness hereby secured, or for an abstract or an extension of abstract of title of the mortgaged premises, together with interest on such sums at twelve per cent. per annum until paid, and this mortgage shall stand as security therefor.

6. That if default is made in the payment of all or any part of the principal or interest hereby secured at the time and place provided in the note hereinbefore referred to or in this mortgage, or if default be made in the payment of any additional sums or sums advanced to the grantor by the grantee when and as the same shall be due and payable, or if the grantor shall suffer or permit waste to be committed on the mortgaged premises, or any mechanic's or other liens arising either by contract or law which might be prior in time to the lien of this mortgage to be created or rest upon all or any part of said mortgaged premises, for ten days, without paying the same, or procuring the release and discharge of said premises from said lien; or shall make default in the full performance of each, any or all the stipulations and covenants of this mortgage, or in case there shall exist upon the premises mortgaged herein any claim, lien or incumbrance prior to this mortgage, then and in each and every such case the entire principal sum secured by this mortgage, with all interest accrued thereon and all amounts secured

by this mortgage, shall, at the option of the grantee, be and become at once due and payable, and may at any time thereafter be collected by suit at law, foreclosure of the mortgage or any other proper, legal or equitable proceeding, without declaration of said option or other or further notice.

7. That no failure of the grantee to exercise any option to declare the maturity of the debt hereby secured under the foregoing conditions shall be taken or deemed as a waiver of the right to exercise such option or declare such forfeiture, either as to any past or present default on the part of the grantor, and the procurement of the insurance or payment of the taxes, assessments or liens by the grantee, as hereinbefore provided, shall not be taken or deemed as a waiver of the right of it to declare the maturity of the indebtedness hereby secured, by reason of the failure of the grantor to procure such insurance or pay such taxes, assessments or liens.

8. That upon the maturity of the indebtedness hereby secured, either by lapse of time or by reason of any default on the part of the grantor, as hereinbefore provided, the grantee shall have the right to forthwith enter into and upon the premises hereinbefore described and take possession thereof and apply the rents, issues and profits thereof upon the indebtedness hereby secured; that the rents, issues and profits of all and every part of the mortgaged premises are hereby specifically pledged to the payment of the indebtedness hereby secured, and all obligations which may accrue against the grantor under the terms of this mortgage or the indebtedness hereby secured, and that upon the maturity of

this indebtedness, either by lapse of time or by default on the part of the grantor, the grantee may proceed at once to foreclose this mortgage, to enforce the payment of the indebtedness and all obligations hereby secured.

9. That if the proceeds of any sale under this mortgage shall not be sufficient to pay the costs and expenses of such foreclosure and sale, including a reasonable attorney's fee, and to pay all moneys, advances, interests and costs secured by this mortgage, then the grantor covenants to pay such deficiency, and a deficiency judgment for such amount may be entered up forthwith without notice, and the decree of foreclosure shall provide that the balance due and costs which may remain unsatisfied after such sale shall be satisfied from any other property of the grantor and execution may be issued therefor and levy made thereunder upon such property or any part thereof.

10. That all of the covenants and agreements herein contained, to be kept and performed on the part of the grantor, shall apply to, and be binding upon, in like manner, the successors and assigns of said grantor.

IN WITNESS WHEREOF, the said grantor has caused these presents to be executed by its president and secretary, and its seal attached, this 5th day of October, A. D. 1914.

B. SCHADE BREWING COMPANY,

By B. SCHADE,

Its President.

Attest: L. R. STRITESKY,

Its Secretary.

State of Washington,
County of Spokane,—ss.

On this 6th day of October, A. D. 1914, before me personally appeared B. Schade and L. R. Stritesky, to me known to be respectively the president and secretary of the B. Schade Brewing Company, the corporation that executed the within instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal thereto affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

J. M. GERAGHTY,
Notary Public for the State of Washington, Residing
at Spokane, Wn.

Rec'd copy of the within amended complaint this
2d day of November, 1917.

O. C. MOORE,
R. P. W.,
Attorney for Defendants.

Filed Nov. 17, 1917, at 9:35 o'clock A. M. Glen
B. Creighton, Clerk. W. C. Steinmetz, Deputy.

STATE FINANCE COMPANY, a Corp.,
Plaintiff,

vs.

B. SCHADE BREWING COMPANY, a Corpor-
ation, et al.,
Defendants.

State of Washington,
County of Spokane,—ss.

No. 55,148.

CERTIFICATE.

I, Emery P. Gilbert, Clerk of the Superior Court of the State of Washington, for the County of Spokane, do hereby certify that the above and foregoing is a true and correct copy of the Amended Complaint, in the above-entitled cause, as the same now appears on file and of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 24th day of June, 1920.

[Seal]

EMERY P. GILBERT,
Clerk.

By Harry C. Clark,
Deputy.

[Endorsed]: Filed in the U. S. District Court. Eastern District of Washington. Oct. 18, 1920. W. H. Hare, Clerk.

No. 3693. United States Circuit Court of Appeals for the Ninth Circuit. Filed May 31, 1921. F. D. Monckton, Clerk.

Plaintiff's Exhibit No. 5.

In the Superior Court of the State of Washington,
in and for the County of Spokane.

No. 55,148.

STATE FINANCE COMPANY, a Corporation,
Plaintiff,

vs.

B. SCHADE BREWING COMPANY, a Corpor-
ation, B. SCHADE and SOPHIA SCHADE,
His Wife,

Defendants.

ANSWER.

Come now B. Schade and Sophia Schade, his wife,
two of the defendants, and for answer to the amended
complaint in the above-entitled action admit, deny
and allege as follows, to wit:

1. Admit paragraph 1 of said amended complaint.
2. Admit paragraph 3 of said amended complaint.
3. Admit the matters and things set forth and
alleged in paragraph 3 of said amended complaint.
4. Deny the matters and things set forth and
alleged in paragraph 4 of said amended complaint.
5. Admit the matters and things set forth and
alleged in paragraph 5 of said amended complaint,
except that defendants deny that defendant B.
Schade guaranteed said notes, either or any of them,
on behalf or for the benefit of the community, con-
sisting of B. Schade and Sophia Schade, his wife,
and allege that said notes were executed and given

in payment of other and pre-existing notes aggregating said sum of \$50,000.00.

6. Admit the execution by defendant B. Schade Brewing Company, a corporation, of the notes referred to and partially described in paragraph 6 of said amended complaint, but deny that said notes were of like tenor and effect with the notes alleged in paragraph 5 of said amended complaint; deny that said notes are of like tenor and effect with the notes described in said mortgage; deny that same were given in renewal of the notes alleged in paragraph 5 of said amended complaint or in renewal of the notes described in said mortgage, and deny each and every matter and thing set forth in paragraph 6 not herein specifically admitted.

7. Admit the execution by defendant B. Schade Brewing Company, a corporation, of the notes referred to and partially described in paragraph 7 of said amended complaint, but deny that said notes were of like tenor and effect with the notes alleged in paragraph 6 of said amended complaint; deny that said notes are of like tenor and effect with the notes described in said mortgage; deny that same were given in renewal of the notes alleged in paragraph 6 of said amended complaint or in renewal of the notes described in said mortgage, and deny each and every matter and thing set forth in paragraph 7 not herein specifically admitted.

8. Admit the execution by defendant B. Schade Brewing Company, a corporation, of the notes referred to and partially described in paragraph 8 of said amended complaint, but deny that said notes

were of like tenor and effect with the notes alleged in paragraph 7 of said amended complaint; deny that said notes are of like tenor and effect with the notes described in said mortgage; deny that same were given in renewal of the notes alleged in paragraph 7 of said amended complaint or in renewal of the notes described in said mortgage, and deny each and every matter and thing set forth in paragraph 8 not herein specifically admitted.

9. Admit the execution by defendant B. Schade Brewing Company, a corporation, of the notes referred to and partially described in paragraph 9 of said amended complaint, but deny that said notes were of like tenor and effect with the notes alleged in paragraph 8 of said amended complaint; deny that said notes are of like tenor and effect with the notes described in said mortgage; deny that same were given in renewal of the notes alleged in paragraph 8 of said amended complaint or in renewal of the notes described in said mortgage, and deny each and every matter and thing set forth in paragraph 9 not herein specifically admitted.

10. Deny the matters and things set forth and alleged in paragraph 10 of said amended complaint except that defendants admit that the guaranty clauses on the instrument therein set forth were signed by said defendant B. Schade under the circumstances and conditions hereinafter alleged and not otherwise.

11. Admit the execution and delivery by defendant B. Schade Brewing Company, a corporation, to the Spokane & Eastern Trust Company of the mort-

gage referred to in paragraph 11 of said amended complaint, a copy of which is attached thereto as Exhibit "A," and deny that said mortgage was given to secure the payment of the notes, or any of the notes, alleged and described in said amended complaint, and deny each and every other matter and thing alleged in said paragraph 11 not herein specifically admitted.

12. Deny the matters and things set forth and alleged in paragraph 12 of said amended complaint.

13. Deny any knowledge or information sufficient to form a belief as to the matters and things set forth and alleged in paragraph 13 of said amended complaint.

14. As to paragraph 14 of said amended complaint, deny that there is due or owing to the plaintiff on account of said notes and mortgage or either or any thereof, the sum of \$50,000, with interest thereon at 8% per annum from July 3, 1916, or any other sum or amount whatever.

15. As to paragraph 15 of said amended complaint, deny any knowledge or information sufficient to form a belief as to whether the plaintiff and its predecessors in interest, or either of them, paid any portion or part of the insurance premiums alleged in said paragraph 15 to have been paid by them.

16. Deny that the sum of \$2500 or any other sum or amount whatever is a reasonable sum to be allowed to plaintiff as an attorney's fee in this action.

For a further separate and affirmative defense to said amended complaint these defendants allege:

I.

That the promissory notes alleged, referred to and partially described in paragraphs 5, 6, 7, 8 and 9 of said amended complaint were, before the institution of this suit, fully paid, satisfied, cancelled, discharged and surrendered to defendant B. Schade Brewing Company.

For a further second and separate defense to said amended complaint these defendants allege:

I.

That the plaintiff herein, State Finance Company, a corporation, did not take and does not now hold the mortgage described in said amended complaint nor the notes thereby secured as a *bona fide* purchaser in due course before maturity for a valuable consideration, but that whatever right, title, claim or interest it has in said mortgage, or any obligation thereby secured, was acquired as the agent of said Spokane & Eastern Trust Company for the purpose of collection only after maturity with full knowledge of all the circumstances concerning the relations between the said Spokane & Eastern Trust Company and defendant B. Schade Brewing Company, and with full knowledge of all the circumstances and conditions surrounding the execution of the various instruments alleged and described in the amended complaint herein.

II.

That on and for a long time prior to the 3d day of April, 1916, defendant B. Schade was and had been suffering from mental impairment, brought on and induced by a complication of serious physical ail-

ments, in consequence of which he was, at the time of signing his name to the guaranty clauses attached to the notes set forth and alleged in paragraph 10 of said amended complaint, mentally irresponsible and incapable of intelligently comprehending or performing and executing any contract or other legal obligation; that in consequences of said illness and defective mental state, he was easily influenced and readily to be dissuaded and induced to act on the suggestion of other persons, and that he subscribed his name to said guaranty clauses aforesaid in consequence of coercion on the part of the officers and agents of said Spokane & Eastern Trust Company and not in pursuance of his own free will, said officers and agents of said Spokane & Eastern Trust Company being fully advised of the mentally and physically unfit condition of said defendant on said date.

WHEREFORE defendants pray judgment that plaintiff take nothing by its said amended complaint; that said action be dismissed and that defendants have and recover their costs and disbursements herein expended.

O. C. MOORE,

Attorney for Defendants B. Schade and Sophia Schade, His Wife.

State of Washington,
County of Spokane,—ss.

Sophia Schade, being first duly sworn, on oath deposes and says: That she is one of the answering defendants in the above-entitled action; that she has read the foregoing and attached answer, knows

the contents thereof and that the same is true as she is advised and verily believes.

SOPHIA SCHADE.

Subscribed and sworn to before me this 23d day of November, A. D. 1917.

R. P. WOODWORTH,
Notary Public in and for the State of Washington,
Residing at Spokane.

Service of the within instrument, by the delivery of a true and correct copy thereof, hereby admitted and accepted this 23d day of November, A. D. 1917.

McCARTHY & EDGE,
Attorneys for Plaintiff

Filed Dec. 4, 1917, at 1 o'clock P. M. Glen B. Creighton, Clerk. E. E. Burton, Deputy.

STATE FINANCE COMPANY,
vs. Plaintiff,
B. SCHADE BREWING CO. et al.,
Defendants.

State of Washington,
County of Spokane,—ss.

No. 55,148.

CERTIFICATE.

I, Emery P. Gilbert, Clerk of the Superior Court of the State of Washington, for the County of Spokane, do hereby certify that the above and foregoing is a true and correct copy of the answer in the above-entitled cause, as the same now appears on file and of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court this 24th day of June, 1920.

[Seal]

EMERY P. GILBERT,
Clerk.
By W. C. Steinmetz,
Deputy.

[Endorsed]: Filed in the U. S. District Court, Eastern District of Washington. Oct. 18, 1920. W. H. Hare, Clerk.

No. 3693. United States Circuit Court of Appeals for the Ninth Circuit. Filed May 31, 1921. F. D. Monekton, Clerk.

Plaintiff's Exhibit No. 6.

In the Superior Court of the State of Washington in and for the County of Spokane.

No. 55,148.

STATE FINANCE COMPANY, a Corporation,
Plaintiff,

vs.

B. SCHADE BREWING COMPANY, a Corporation,
B. SCHADE and SOPHIA SCHADE,
His Wife,

Defendants.

ANSWER.

Comes now B. Schade Brewing Company, a corporation, one of the defendants and for answer to the amended complaint in the above-entitled action admits, denies and alleges as follows, to wit:

1. Admits paragraph 1 of said amended complaint.

2. Admits paragraph 2 of said amended complaint.

3. Admits the matters and things set forth and alleged in paragraph 3 of said amended complaint.

4. Denies the matters and things set forth and alleged in paragraph 4 of said amended complaint.

5. Admits the matters and things set forth and alleged in paragraph 5 of said amended complaint, except that defendant denies that defendant B. Schade guaranteed said notes, either or any of them, on behalf or for the benefit of the community, consisting of B. Schade and Sophia Schade, his wife, and alleges that said notes were executed and given in payment of other and pre-existing notes aggregating said sum of \$50,000.00.

6. Admits the execution by this defendant of the notes referred to and partially described in paragraph 6 of said amended complaint, but denies that said notes were of like tenor and effect with the notes alleged in paragraph 5 of said amended complaint; denies that said notes are of like tenor and effect with the notes described in said mortgage; denies that same were given in renewal of the notes alleged in paragraph 5 of said amended complaint or in renewal of the notes described in said mortgage, and denies each and every matter and thing set forth in paragraph 6 not herein specifically admitted.

7. Admits the execution by this defendant of the notes referred to and partially described in para-

graph 7 of said amended complaint, but denies that said notes were of like tenor and effect with the notes alleged in paragraph 6 of said amended complaint; denies that said notes are of like tenor and effect with the notes described in said mortgage; denies that same were given in renewal of the notes alleged in paragraph 6 of said amended complaint or in renewal of the notes described in said mortgage, and denies each and every matter and thing set forth in paragraph 7 not herein specifically admitted.

8. Admits the execution by this defendant of the notes referred to and partially described in paragraph 8 of said amended complaint, but denies that said notes were of like tenor and effect with the notes alleged in paragraph 7 of said amended complaint; denies that said notes are of like tenor and effect with the notes described in said mortgage; denies that same were given in renewal of the notes alleged in paragraph 7 of said amended complaint or in renewal of the notes described in said mortgage, and denies each and every matter and thing set forth in paragraph 8 not herein specifically admitted.

9. Admits the execution by this defendant of the notes referred to and partially described in paragraph 9 of said amended complaint, but denies that said notes were of like tenor and effect with the notes alleged in paragraph 8 of said amended complaint; denies that said notes are of like tenor and effect with the notes described in said mortgage; denies that same were given in renewal of the notes

alleged in paragraph 8 of said amended complaint or in renewal of the notes described in said mortgage, and denies each and every matter and thing set forth in paragraph 9 not herein specifically admitted.

10. Denies the matters and things set forth and alleged in paragraph 10 of said amended complaint except that defendant admits that the guaranty clauses on the instrument therein set forth were signed by said defendant B. Schade under the circumstances and conditions hereinafter alleged and not otherwise.

11. Admits the execution and delivery to the Spokane & Eastern Trust Company of the mortgage referred to in paragraph 11 of said amended complaint, a copy of which is attached thereto as Exhibit "A," and denies that said mortgage was given to secure the payment of the notes, or any of the notes, alleged and described in said amended complaint, and denies each and every other matter and thing alleged in said paragraph 11 not herein specifically admitted.

12. Denies the matters and things set forth and alleged in paragraph 12 of said amended complaint.

13. Denies any knowledge or information sufficient to form a belief as to the matters and things set forth and alleged in paragraph 13 of said amended complaint.

14. As to paragraph 14 of said amended complaint, denies that there is due or owing to the plaintiff on account of said notes and mortgage or either or any thereof, the sum of \$50,000 with in-

terest thereon at 8% per annum from July 3, 1916, or any other sum or amount whatever.

15. As to paragraph 15 of said amended complaint, denies any knowledge or information sufficient to form a belief as to whether the plaintiff and its predecessors in interest, or either of them, paid any portion or part of the insurance premiums alleged in said paragraph 15 to have been paid by them.

16. Denies that the sum of \$2,500 or any other sum or amount whatever is a reasonable sum to be allowed to plaintiff as an attorney's fee in this action.

For a further separate and affirmative defense to said amended complaint defendant alleges:

I.

That the promissory notes alleged, referred to and partially described in paragraphs 5, 6, 7, 8 and 9 of said amended complaint were, before the institution of this suit, fully paid, satisfied, cancelled, discharged and surrendered to this defendant.

II.

That the plaintiff herein, State Finance Company, a corporation, did not take and does not now hold the mortgage described in said amended complaint nor the notes thereby secured as a *bona fide* purchaser in due course before maturity for a valuable consideration, but that whatever right, title, claim or interest it has in said mortgage, or any obligation thereby secured, was acquired as the agent of said Spokane & Eastern Trust Company for the purpose of collection only after maturity with full knowl-

edge of all the circumstances concerning the relations between the said Spokane & Eastern Trust Company and this defendant, and with full knowledge of all the circumstances and conditions surrounding the execution of the various instruments alleged and described in the amended complaint herein.

WHEREFORE defendant prays judgment that plaintiff take nothing by its said amended complaint; that said action be dismissed and that defendant have and recover its costs and disbursements herein expended.

O. C. MOORE,

Attorney for Defendant B. Schade Brewing Company, a Corporation.

State of Washington,
County of Spokane,—ss.

Sophia Schade, being first duly sworn on oath deposes and says: That she is an officer, to wit, a trustee, of the B. Schade Brewing Company, a corporation, one of the defendants in the above-entitled action and makes this affidavit for and on behalf of said defendant in her said capacity as a trustee thereof; that she has read the foregoing and attached answer, knows the contents thereof and that the same is true as she is advised and verily believes.

SOPHIA SCHADE.

Subscribed and sworn to before me this 23d day of November, A. D. 1917.

R. P. WOODWORTH,
Notary Public in and for the State of Washington,
Residing at Spokane.

[Endorsed]: Filed in the U. S. District Court, Eastern District of Washington. Oct. 18, 1920. W. H. Hare, Clerk.

No. 3693. United States Circuit Court of Appeals for the Ninth Circuit. Filed May 31, 1921. F. D. Monckton, Clerk.

Plaintiff's Exhibit No. 7.

LIST AND DESCRIPTION OF MACHINERY.

B. SCHADE BREWING CO.

ENGINE-ROOM 1ST FLOOR.

One Frick 12 ton Ice making, or 25 ton Refrigerating machine, complete with ammonia tank, etc.; with necessary condenser piping in storage room on 3rd floor, consisting of about 960 ft. 2" pipe, suction header and tools. Shipping weight approximately 25000 lbs.

Necessary piping from this machine to adjacent boiler room, with steam trap, oil trap and various steam services throughout the building, with necessary valves, etc., such as are customary in steam installation of first-class character. S. W. App. 5000 lbs.

1' platform freight elevator, 4000 lbs, capacity, motor driven. 40 ft. lift, with a 10 H. P. motor, Fairbanks-Morse 900 R. P. M. 500 volts. S. W. App.	7000 lbs.
1 20 H. P. Nagle Steam Engine No. 16,416. S. W. App.....	1000 lbs.
1 5 $\frac{1}{4}$ x3 $\frac{1}{2}$ x5 Gardner Air Pump, single cylinder. S. W. App.....	250 lbs.
1 6x7x6 Double Cylinder Canton Pump Co. Air Pump, with 10"x60" air tank. S. W. App.....	1200 lbs.
1 Steel Hop Jack, 10 ft. diam. 6' 6" high, with copper false bottom. S. W. App.....	4000 lbs.
1 5 $\frac{1}{2}$ x3 $\frac{1}{2}$ x5 Gardner Duplex Steam Pump, used as beer pump from hop jack to beer cooler above with connections.....	400 lbs.
1 Chas. Kiewert Chip Washer, 32" diam. 60" long.....	750 lbs.
1 Loco Magic Steel Filter Washer 43" diam. 96" long. Loew Mfg. Co.....	4000 lbs.
1 Motor and Shafting to drive the two preceding machines with shifting pulleys, belting, etc., so that either can be driven separately, cast iron shaft hangers, steel pulleys, Motorpa 3 H. P. Westinghouse Induction Motor, 200 volts, 1120 R. P. M. S. W. App.	750 lbs.

Steam, water and air-piping connections, valves, etc.; connecting boilers to pumps, pumps to chip casks, brew kettle, engine, etc., with 5" steam header with 3 valve controlled openings. Piping from $\frac{3}{4}$ " to 4".

- 1 American Feed Water Heater, No. 11 Shop No. 4820.

BREW-ROOM.

- 1 Goetz & Flodin Copper Kettle, steam heated, set on 4 cast iron columns, 13 ft. long, 5" diam. with steam connections, and steam trap, copper goose neck 24" diam. and steel vent pipe to roof, copper pipe to hop jack. 110 barrels capacity.
- 1 Steel Mash Tub (Goetz & Flodin) 12 ft. diam. 6 ft. high, with vermasher and copper grande, with three outlets; steel beam supports consisting of 8-6" steel beams 14 ft long, 1-12" beam 13 ft. long and cast iron post supports. Cast iron mixing apparatus, same connected to main drive shaft with 8" leather belt about 30 ft. long, and friction clutch.
- 2 $\frac{1}{4}$ " main counter shaft, 16 ft. long on 4 cast iron hangers, with 11x36" steel driving pulley connecting with engine below, also drive to counter-shaft above and to *conter* shaft for wash-room, belting and connections. Steel pulleys of proper sizes, belt tightener, frame, etc.
- 1 Platform freight elevator, belt driven, capacity 1500 lbs., platform 5'x6'x6", with standard gear and control devices.

MALT MILLING-ROOM.

- 1 Olsen & Tilgner steel bucket elevator, 8"x10" steel

spouts to elevator, 20 ft. long. Steel boot and head gear, belted to main counter-shaft.

- 1 Olsen & Tilgner Malt Mill and malt screen, complete with enclosing box and belt driven drive gear, 6" leather belt 30 ft. long.
- 1 Steel Rice Cooker, 7 ft. diam. 7 ft. high, belt driven, with driving gear complete, 6" belt 30 ft. long.
- 1 Steel hot-water tank, 10 ft. diam. 8 ft. high, with steam exhaust coils for heating same.
- 1 7x4 $\frac{1}{2}$ "x6 Gardner Duplex Pump.
- 1 Main counter-shaft 2", 26 ft. long, 7 C. I. hangers, 4 cast iron pulleys, one friction clutch for rice cooker, 8" main drive belt to main shaft 1 story below and connected to rice cooker, elevator and malt mill, etc.

LOFT ROOM.

- 1 Baudlet beer cooler, 28 copper tubes 2 $\frac{1}{4}$ " diam., 16 ft. long, with steel tray, 12"x36"x18 ft. long.

SMALL WASH-ROOM.

- 1 Rauch pitching machine and pitch tank.
- 2" steel shaft in two wash-rooms, 64 lin. ft. 8 C. I. shaft-hangers.
- 6 split wood pulleys.

LARGE WASH-ROOM.

- 1 Olsen & Tilgner machine for washing outside of kegs.
- 1 John S. Cram Hoop Driver machine No. 411,832.
- 1 5 H. P. induction motor, Gen. Electric Co. 60 cycle, 220 volts for driving keg washer and hoop driver with necessary counter shaft and belting.

- 1 3 keg stand sprinkler for washing inside of kegs,
for hot and cold water, with necessary connect-
ing pipe, etc.

RACKING-ROOM.

- 1 New White 3 keg racking machine complete.

CHIP CELLAR.

- 1 Keifer Filter 24 inch diam.

- 1 24" Keifer Filter press.

SUNDRIES.

Sundry supplies, such as rubber hose, tools, uten-
sils, etc., of various kinds.

Number of available kegs is largely approximate,
about 20000 $\frac{1}{4}$ bbls., $\frac{1}{2}$ bbls. and barrels, which
when re-coopered will be as serviceable as new
kegs.

REFRIGERATING PIPING: 9000 lin. ft. 2"
EXTRA HEAVY piping and connections and
return bends etc.

COOPERAGE.

- 2 fir water-tanks, 14 ft. diam., 10 ft. ~~high~~ stave, $2\frac{1}{4}$ "
thick, 9-4" hoops, capacity 315 barrels.

Chip Casks: 14 oak casks, 12 ft. diam., 11 ft. long,
 $3\frac{1}{2}$ oak staves, 14 steel hoops, Heiser Patent
Doors, capacity each 300 bbls.

- 8 oak casks, 12 ft. ~~stave~~ diam., 8 ft. stave, $2\frac{3}{4}$ " stave,
12 hoops, Heiser patent doors. Cap. each 180
bbls.

- 12 oak casks, 7 ft. stave, 8 ft. diam., $2\frac{1}{4}$ " stave, 10
steel hoops. cap. each 45 bbls.

Stock Tanks: 13 fir tanks, 8 ft. diam. 12 ft. high,
2" staves, 12 hoops, Heiser patent doors, cap.
each 100 bbls.

FERMENTING TUBS.

5 Tubs, 7' 6" diam.; 7 ft. staves, 1-5/8" thick, 7 hoops with brine circulating coils in same, cap. each 55 bbls.

10 fir fermenting tubs, 8 ft. diam. 8 ft. staves, staves 2" thick, 6 hoops cap. each 75 bbls.

BOILER-ROOM.

1 Babcock & Wilcox 250 H. P. water-tube boiler, 150 lbs. working pressure, with 60 ft. steel stack.

1 Duplex Worthinton pump steam, 7 1/2 x 5 x 6.

Water piping with proper valves, expansion joints, feed pipes to pump, etc.

BOTTLE-SHOP.

1 New Eick No. 32354 Bottle Washer, Goetz Mfg. Co.

1 Jos. Posh Air Pump double cylinder.

1 Henes & Keller Co., Bottle filler, 10 bottle capacity.

1 Crown Cork & Seal Co. Corking machine.

4 barrel tap devise for transferring from kegs to bottle filler to take beer from 4 kegs.

1 Motor driven pasteurizer, Mfg. by Barry Weh-miller Mach. Co., St. Louis, Mo. 6' x 11' pasteurizing tank.

1 Economic Machinery Co. "World Labler."

1 Crown Corker for soft drinks.

1 Motor driven carbonizing & filling machine for sodas, Mfg. by Liquid Carbonic Co., Chicago.

1 Loew Beer Filter. Piping and sundries.

Shafting and belting equipment, 9 cast iron hangers, 75 lin. ft. shafting, 3 wood split pulleys, small

cast iron pulleys, with power induction motors and belting to the various machines.

5 H. P. 1800 Rev. 200 volt, Gen. Elect. Co. Motor.

This list subject to change or revision without notice in accordance with sales.

K. J. S.

[Endorsed]: Filed in the U. S. District Court, Eastern District of Washington. Oct. 18, 1920. W. H. Hare, Clerk.

No. 3693. United States Circuit Court of Appeals for the Ninth Circuit. Filed May 31, 1921. F. D. Monckton, Clerk.

Plaintiff's Exhibit No. 9.

SPOKANE AND EASTERN TRUST CO.

Spokane, Washington.

August 25, 1919.

The Stockholders of the B. Schade Brewing Company:

As you know, the Spokane and Eastern Trust Company was a creditor of the B. Schade Brewing Company under a note for \$60,000 secured by a mortgage on the real estate, plant and equipment of the corporation. The mortgage being in default, with no prospect of payment, we negotiated with the officers of the company to effect some settlement, and we finally were compelled to institute a suit for foreclosure. The suit was subsequently dismissed when the Brewing Company and the Spokane and Eastern Trust Company came to an agreement whereby the property covered by the mortgage was deeded to the trust company and the indebted-

ness of the brewery to the bank was cancelled. Simultaneously the brewing company was granted an option for practically eighteen months expiring July 1, 1919, to purchase the property thus conveyed on payment to the Spokane and Eastern Trust Company of the amount of the brewery's indebtedness, together with accrued interest at seven per cent, plus any taxes and expenses that the trust company might have advanced in the care of the property in the meantime. The period covered under this option having expired, the rights of the B. Schade Brewery Company to repurchase the property have terminated. The Spokane and Eastern Trust Company is accordingly owner of the brewery and equipment.

It is believed that there is a substantial equity in the value of the property in excess of the amount of the investment of the Spokane and Eastern Trust Company, and in an earnest desire that the stockholders shall get the benefit of whatever equity there may be in the property, we have consulted with some of the larger stockholders and their counsel, and the Spokane and Eastern Trust Company submits the following proposition:

As of September 1, 1919, the amount invested by the Spokane and Eastern Trust Company on its claim, together with accrued interest, taxes, expenses and carrying charges, is approximately \$76,000. The capital stock of the B. Schade Brewing Company is 7,500 shares.

The stockholders of the B. Schade Brewing Company who desire to protect their equity in the brew-

ery will have accordingly a *pro rata* liability of roundly \$10 per share if they were to contribute equally to take up the investment of the Spokane and Eastern Trust Company. To all such stockholders who desire to pay on account of this indebtedness a sum equal to \$10 per share on the stock held by them, we are prepared to give them a proportionate interest in the property on the ratio that payments made by them bear to the total investment of the bank. For example, if the holder of one hundred shares of Schade stock were to pay \$10 a share or \$1,000 as of September 1, 1919, and if the investment of the Spokane and Eastern Trust Company including interest and carrying charges at that time were \$76,000, such stockholder would have an undivided one seventy-sixth interest.

If all of the stockholders of the B. Schade Brewing Company would make a contribution under this arrangement, the Spokane and Eastern Trust Company would be paid in full, and the stockholders would collectively own the property independent of their status as shareholders in the brewing company.

As, however, it is very doubtful whether all the stockholders will be able to take advantage of this offer, we are uncertain what percentage of ownership would be retained by the Spokane and Eastern Trust Company. If only a few thousand dollars were paid in, the bank would be in the position of holding a fractional interest in the property in common with such shareholders as might participate. As any individual shareholders who had become a possessor of an undivided interest in the property

could then stop any sale or lease of the property, the situation that would thus result might be exceedingly disastrous to all concerned. The uniform consent of all the owners would be required before any disposition could be made of the property, and, on the death of any individual shareholder, it would be necessary to probate his estate in this country to dispose of his interest in this property. To obviate these difficulties, the exclusive management, sale, leasing or disposition of the estate shall be vested in the Spokane and Eastern Trust Company with power to act at any time in accordance with its best judgment. Any income that may be derived from the rental of the property after paying the operating expenses, would be held for the joint account of all the participants, and in the event of a sale (which could be effected at any time in the exclusive discretion of the Spokane and Eastern Trust Company as trustee for the participating stockholders) the proceeds of the sale would be distributed *pro rata* among such participants and the trust company.

We, of course, cannot guarantee any results from the operation of the property under this change. We can, however, guarantee that all the stockholders who join with us in this plan will share equally with ourselves in the liquidation of the property.

Stockholders who desire to take advantage of this proposition should communicate with us at once, and should make payment not later than October 1, 1919. All rights of participation will terminate automatically on that date. Interest from September 1 on the amounts paid by them at the rate of

seven per cent per annum should be added to their remittance up to the date remittance reaches us.

Legal matters in connection with the transaction will be handled by Graves, Kizer & Graves of Spokane. The interest of the shareholders who participate will not be in the real estate, but solely in the net income and in the net proceeds of the sale thereof, and will be represented not by a deed but by a declaration of trust given by the Spokane and Eastern Trust Company in a form approved by Messrs. Graves, Kizer & Graves.

Attached herewith is a statement of the account with the Spokane and Eastern Trust Company calculated as of September 1, 1919. The account may vary slightly when finally closed on that date, but the difference will not be material.

Yours truly,

W. B. HUBBARD,

W. B. HUBBARD,

Assistant to President.

B. SCHADE BREWING COMPANY

to

September 1, 1919.

		Orig.	Adv. 7%	Interest to 9-1-19.
1- 1-18		62 601 80		7 303 54
3-13-18	Personal property tax.....		135 28	13 86
4- 2-18	Abstract and recording.....		9 50	93
4-11-18	Insurance		60 50	5 87
5-22-18	First half real estate tax....	1 035 12		
	Insurance		106 55	101 93
6-14-18	Attorneys fees	1 000 00		84 97
10-30-18	Roof repairs		89 00	5 21

11- 4-18	Insurance	93 75	5 43
12- 4-18	Insurance	143 75	7 48
12-11-18	Second half tax and interest.1	102 36	55 67
1-29-19	Judgment paid	243 12	10 01
3- 5-19	Insurance	63 87	2 19
4-18-19	Insurance	49 50	1 29
5- 2-19	Insurance	67 70	1 58
5-26-19	First half 1918 tax.....1	039 05	19 19
7-25-19	1918 personal tax and interest	158 48	1 11
8-17-19	Second half 1918 tax.....1	039 05	2 82
		<hr/>	
		69 038 38	7 623 08

Credits.

4-19-18	Return a/c overpayment of tax.	2 07	19
10- 5-18	Sale of machinery.....	603 75	38 28
		<hr/>	
		605 82	38 47
Net.....		68 432 56	7 584 61
		<hr/>	
		7 584 61	
		<hr/>	
		76 017 17	

[Endorsed]: Filed in the U. S. District Court,
Eastern District of Washington. Oct. 18, 1920.
W. H. Hare, Clerk.

No. 3693. United States Circuit Court of Ap-
peals for the Ninth Circuit. Filed May 31, 1921.
F. D. Monckton, Clerk.

Defendants' Exhibit No. 10.

Spokane, Wash., Sept. 24, 1917.

Sep. 26, 1917.

Spokane Eastern Trust Co.,
City.

This is to inform you of conditions as they exist
at the present time with the B. Shade Brewing
Company, of which you are a stockholder.

In the past two months things have developed rapidly, due I suppose to the war and the fact that money is a scarce article in circulation.

Business matters with this corporation are going to change for the worse or the better, owing to the fact that the Spokane & Eastern Trust Co. is pressing with the mortgage of Fifty Thousand (\$50,000) Dollars and interest, which they hold against this firm. I have always been solicitous for the welfare of the stockholders, and now I would ask for your opinion in this matter.

In order to safeguard your own interests quick action must be taken in the matter of paying this debt to the bank, otherwise if I am forced to sell for the mortgage when the appraised valuation of this property and buildings is at least ten times the sum of the mortgage, a grave injustice will have been committed, together with a great loss to all concerned.

I trust you will understand this situation.

Perhaps it would be for the best interests of all concerned to sell outright. This is the plan that I look most favorable to at present.

Awaiting your reply, I remain,

Very truly yours,

THE B. SCHADE BREWING CO.

B. SCHADE,

President.

[Endorsed]: Filed in the U. S. District Court,
Eastern District of Washington. Oct. 18, 1920.
W. H. Hare, Clerk.

No. 3693. United States Circuit Court of Appeals for the Ninth Circuit. Filed May 31, 1921.
F. D. Monckton, Clerk.

Defendants' Exhibit No. 11.

Cable Address "Schade."

Western Union Code.

Telephone Connections.

P. O. Box 1685.

THE B. SCHADE BREWING CO.,

Sheridan and Front Sts.

Spokane, Wash. May 31, 1918.

Jun. 14, 1917.

Spokane Eastern Trust,
City.

Dear Sir:

You have doubtless received a copy of the letter of May 25th, of R. L. Rutter, president of the Spokane & Eastern Trust Co., together with a copy of the form letter, concerning the affairs of the B. Schade Brewing Co., though the undersigned, the largest individual stockholder, was not favored with a copy.

The obvious purpose of this communication is to create the impression that the officers of the Brewing Company are not acting for the best interests of the stockholders in the conduct of the affairs of the Brewing Company. As stated in Mr. Rutter's letter, under pressure of legal proceedings, the company was forced to deed over its entire holdings to the Spokane & Eastern Trust Co. with the right of redemption at any time on or before July 1st, 1919.

The bank having thus exacted and obtained its pound of flesh in consequence of the temporary inability of the company to promptly continue payment of the high interest rate which had been extracted for several years previous owing to conditions, not now necessary to relate, now seeks to assume a solicitous attitude concerning the affairs of the Brewing Company and the handling of this equity of redemption, the only remaining asset of the company.

While the writer, who has devoted the best years of his life to the affairs of the B. Schade Brewing Company in an endeavor to make it a successful and profitable institution and with a large degree of success prior to the prohibition laws, is more than glad to have the stockholders fully advised as to the conditions, the position now assumed by the Spokane & Eastern Trust Co. does not bear the stamp of sincerity.

For several months past the officers of the Brewing Company have been exerting themselves to find a purchaser of the property. More than one year, however, remains for redemption under the agreement with the bank, and it has not, therefore, been thought necessary to act with undue haste, particularly in view of the depressed real estate market in consequence of war conditions.

While as above stated, it is difficult to understand the motive of the Spokane & Eastern Trust Co. in writing this letter concerning the properties to which it now holds a record title, obtained by the most drastic methods, the writer has it on good authority that an officer of the bank has intermed-

dled in at least one of the prospective deals for the sale of this property being conducted by the officers of the Brewing Company and its agents.

Our purpose in writing this letter is to advise of the sincere desire and purpose of the managing directors of the B. Schade Brewing Company to get the very best possible results for all concerned from the small remaining fragments of the once exceedingly valuable holdings of that concern. In our effort to obtain these results, fair and conscientious counsel and advice of any and all stockholders is solicited and will at all times be highly appreciated.

Very truly yours,

B. SHADE BREWING COMPANY,

B. SCHADE,

President.

[Endorsed]: Filed in the U. S. District Court, Eastern District of Washington. Oct. 18, 1920. W. H. Hare, Clerk.

No. 3693. United States Circuit Court of Appeals for the Ninth Circuit. Filed May 31, 1921. F. D. Monckton, Clerk.

Defendants' Exhibit No. 12.

In the Superior Court of the State of Washington,
in and for the County of Spokane.

#55,148.

STATE FINANCE COMPANY, a Corporation,
Plaintiff,

vs.

B. SCHADE BREWING COMPANY, a Corpora-
tion, B. SCHADE and SOPHIA SCHADE,
His Wife,

Defendants.

ORDER.

This matter came on for hearing on application
for dismissal of said cause:

It appearing by stipulation on file that said cause
has been fully settled;

IT IS ORDERED that said cause be and the
same is hereby dismissed *with* prejudice and with-
out cost to either party.

Done in open court this 9th day of March, 1918.

HUGO EDSWALD,
Judge.

STATE FINANCE COMPANY, a Corporation,
Plaintiff,

vs.

B. SCHADE BREWING COMPANY, a Corpora-
tion, B. SCHADE and SOPHIA SCHADE,
His Wife,

Defendants.

State of Washington,
County of Spokane,—ss.

No. 55,148.

CERTIFICATE.

I, Emery P. Gilbert, Clerk of the Superior Court of the State of Washington, for the County of Spokane, do hereby certify that the above and foregoing is a true and correct copy of the Order of Dismissal in the above-entitled cause, as the same now appears on file and of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said court, this 19th day of October, 1920.

[Seal]

EMERY P. GILBERT,

Clerk.

Harry C. Clark,

Deputy.

[Endorsed]: Filed in the U. S. District Court, Eastern District of Washington. Oct. 18, 1920.
W. H. Hare, Clerk.

No. 3693. United States Circuit Court of Appeals for the Ninth Circuit. Filed May 31, 1921.
F. D. Monckton, Clerk.